IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

KERRI JOHNSTON,

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant.

Case No. 93-C-33-B

ORDER

Before the Court for consideration is the motion to remand for lack of jurisdiction filed by Plaintiff on January 14, 1993. Defendant filed a response on February 9, 1993, and Plaintiff improperly filed a reply on February 19, 1993.[1] Upon review of the record, the arguments of the parties and the pertinent legal authority, the Court concludes Plaintiff's motion should be granted and this matter should be remanded to the District Court of Creek County.

Removal of an action from state court to federal court requires that the United States district court have original jurisdiction over the matter. 28 U.S.C. §1441. Defendant's Petition for Removal states that this Court has original jurisdiction pursuant to 28 U.S.C. §1332. Section 1332 provides:

> (a) The Districts Courts shall have original jurisdiction of all civil actions where the

[1] Local Rule 14(B) provides: "Reply ... briefs are not encouraged and may be filed only upon application and leave of Court." Plaintiff did not apply for, or receive, leave of Court to file a reply. For this reason, Plaintiff's reply will not be considered.

> matter in controversy exceeds the sum of $50,000, exclusive of interest and costs, and is between
>
> (1) Citizens of different states. ...

Plaintiff, Kerri Johnston ("Johnston"), contends that the amount in controversy in this case does not exceed $50,000 and therefore this Court lacks jurisdiction.

This action arises from an auto collision occurring February 18, 1990, in Sapulpa, Oklahoma. Plaintiff filed suit against the driver of the other car, Melvin Stockton ("Stockton"), and Plaintiff's uninsured/underinsured motorist insurance carrier, State Farm Mutual Automobile Insurance Company ("State Farm"). State Farm filed a cross-claim against Stockton. Prior to the removal of the case, both Plaintiff and State Farm dismissed their respective claims against Stockton.

Thus, at the time of the removal, this action only included a claim against State Farm, seeking the policy limits of Plaintiff's insurance contract with State Farm. The parties agree that the limit of the applicable insurance policy is $50,000.

In a case sought to be removed from State to Federal Court, the right to removal is decided by the pleadings, viewed as of the time when the petition for removal is filed. Bowman v. Iowa State Travelers Mutual Assurance Co., 449 F.Supp. 60, 62 (E.D.Okla. 1978). The time to ascertain if the requisite jurisdictional amount necessary to invoke Federal Court jurisdiction is present is the time the petition for removal is filed. Nickel v. Jackson, 380 F.Supp. 1389, 1390 (W.D.Okla. 1974).

At the time the petition for removal was filed in the instant

action, Johnston and State Farm were the only parties and the action only involved a contract claim for $50,000, the limit of the insurance policy. This action no longer includes a personal injury tort claim. Thus, the maximum amount Plaintiff can recover (i.e. the amount in controversy) in this lawsuit is $50,000, the limit of the insurance contract.

Claims seeking exactly $50,000 are deemed insufficient to meet the jurisdictional requirement. Boardwalk Regency Corp. v. Karabell, 719 F.Supp. 1254,1255 (D.N.J. 1989). A claim on a policy of insurance with a limit less than or equal to the jurisdictional amounts required for federal jurisdiction require remand to the state court. See Blansett v. American Employers Ins. Co., 652 F.2d 535 (5th Cir. 1981).

For the above stated reasons, Plaintiff's motion to remand this matter to the District Court of Creek County, Sapulpa Division, is hereby GRANTED. Costs are hereby assessed against Defendant if timely applied for pursuant to Local Rule 6. The parties are to pay their own respective attorneys' fees.

IT IS SO ORDERED THIS 25 DAY OF FEBRUARY, 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

NANCI CORPORATION,

Plaintiff,

v. 92-C-0587-B

INTERNATIONAL PRODUCT RESOURCES, et al,

Defendants.

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed February 3, 1993 in which the Magistrate Judge recommended that Plaintiff's Amended Motion for Default Judgment be held as moot; and Plaintiff's Motion for Default Judgment be granted in its entirety, subject to proof of damages, same to be presented at evidentiary hearing following entry of default.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate Judge should be and hereby is adopted and affirmed.

It is, therefore, Ordered that Plaintiff's Amended Motion for Default Judgment is held as moot; and Plaintiff's Motion for Default Judgment is granted in its entirety, subject to proof of damages, same to be presented at evidentiary hearing following entry of default.

SO ORDERED THIS 25 day of Feb., 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

KENNETH WAYNE CRESSWELL, Plaintiff,	)	
v.	)	CASE NO. 91-C-387-B
SHERIFF STANLEY GLANZ, Defendant.	)	

J U D G M E N T

Pursuant to the Order entered simultaneously herein, granting summary judgment in favor of Defendant Sheriff Stanley Glanz and against Plaintiff Kenneth Wayne Cresswell on Plaintiff's Second Claim (medical care claim), Judgment is hereby entered in favor of Defendant Sheriff Stanley Glanz and against Plaintiff Kenneth Wayne Cresswell on Plaintiff's Second Claim. Costs are assessed against Plaintiff if timely applied for under Local Rule 6. Parties are to pay their own respective attorney fees.

IT IS SO ORDERED this 22nd day of February, 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DONIECE LACKEY, as the duly appointed Executrix of the Estate of William Roy Lackey, deceased, and as personal representative of the heirs of William Roy Lackey,	)	CIV 92 C 428 E
Plaintiff,	)	
v.	)	
THE UNITED STATES OF AMERICA	)	
Defendant.	)	

STIPULATION OF DISMISSAL

COME NOW the parties in the above-captioned cause of action, and jointly stipulate to the dismissal of this action pursuant to Rule 41(a)(1)(ii), Federal Rules of Civil Procedure. Each party is to bear the burden of its own costs.

DATED: February 26, 1993.

Doniece Lackey
DONIECE LACKEY
Plaintiff

GALEN L. BRITTINGHAM
Attorney for Plaintiff

TONY GRAHAM
United States Attorney

KATHLEEN BLISS ADAMS
Assistant US Attorney

Debra D. Fowler
DEBRA D. FOWLER
Trial Attorney,
Department of Justice
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

PATRICK J. MALLOY III,

Plaintiff,

vs. Case No. 92-C-422-E

JOHN HAUSAM,

Defendant.

ORDER OF DISMISSAL

THIS MATTER having come on to be heard this 25 day of February, 1993, upon Stipulation for Dismissal, the Court finds that the case should be dismissed.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the claim is hereby dismissed with prejudice.

DATED this 25 day of February 1993.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Approved As To Form:

Patrick J. Malloy III, OBA 5647
MALLOY & MALLOY, INC.
1924 South Utica, Suite 810
Tulsa, Oklahoma 74104
Telephone: (918) 747-3491
ATTORNEYS FOR PLAINTIFF

Sidney K. Swinson, OBA 8804
HUFFMAN ARRINGTON KIHLE
GABERINO & DUNN, P.C.
100 West 5th St., Suite 1000
Tulsa, Oklahoma 74103-4219
Telephone: (918) 585-8141
ATTORNEYS FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ROBERT M. BODILY, individually, and SHARON G. BODILY, individually, and as husband and wife, and STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiffs,

vs.

TIM MAHAFFEY and LANNA MAHAFFEY,

Defendants.

No.: 92-C-908-C

ORDER OF DISMISSAL WITH PREJUDICE

NOW, on this 24 day of Feb, 1993, this matter comes on for hearing pursuant to the Stipulation for Dismissal with Prejudice.

It appears to the satisfaction of this Court that all matters and controversies have been fully settled, adjusted, and compromised by and between the parties as evidenced by the signatures of their attorneys on the Stipulation for Dismissal with Prejudice filed herein on the 22nd day of Feb, 1993; therefore,

IT IS ORDERED, ADJUDGED AND DECREED that the Plaintiffs' suit be, and the same is hereby, dismissed with prejudice; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party to this action bear his/her/its own costs and attorney's fees.

JUDGE OF THE DISTRICT COURT

UNITED STATES DISTRICT COURT NORTHERN DISTRICT
STATE OF OKLAHOMA

RICHARD HILDERBRAND,

Plaintiff,

vs.

BENNY L. DIRCK, an individual, CHARLES WILLIAMS, JR. a/k/a TUBBY WILLIAMS, JR., an individual, THE ESTATE OF ANDREW WIMBERLY and CITY OF CATOOSA, a municipality,

Defendants.

Case No. 91-C-921-C

STIPULATION OF DISMISSAL WITH PREJUDICE

All the parties to this action hereby stipulate that any and all causes of action and claims against the Defendants, Benny L. Dirck, Charles "Tubby" Williams, Jr., The Estate of Andrew Wimberly and the City of Catoosa, are hereby dismissed with prejudice.

RICHARD HILDERBRAND, PLAINTIFF

RICHARD D. WHITE, JR.
WHITE & RENO
111 W. 5th, Ste. 510
Tulsa, OK 74103

ATTORNEY FOR PLAINTIFF,
Richard Hilderbrand

ELLER AND DETRICH
A Professional Corporation

JOHN H. LIEBER, OBA #5421
2727 East 21st Street
Suite 200, Midway Building
Tulsa, Oklahoma 74114

ATTORNEY FOR DEFENDANTS

MAG\Catoosa\Stip.DWP

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BRIAN COWAN,

Plaintiff,

vs.

STATE OF OKLAHOMA EX REL. DEPARTMENT OF CORRECTIONS,

Defendant.

Case No. 91-C-837-E

STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the Plaintiff and the Defendant, by and through their respective counsel of record, and hereby stipulate to the dismissal of this action with prejudice, each party to bear its own costs.

Respectfully submitted,

SUSAN B. LOVING, ATTORNEY GENERAL OF OKLAHOMA

BY: _____

Dan Peters
Assistant Attorney General
State Capitol Building
Oklahoma City, OK 73105
405/521-3921
Attorneys for Defendant

20

FRASIER & FRASIER

BY: _____

Steven R. Hickman OBA#4172
1700 Southwest Blvd, Suite 100
P. O. Box 799
Tulsa, OK 74101
918/584-4724
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROLAND D. FOSTER,

Petitioner,

vs.

STATE OF OKLAHOMA, et al.,

Respondents.

No. 93-C-119-E

EOD 2/25/93

ORDER

Petitioner has filed an application for a writ of habeas corpus. However, it shall be dismissed at this time. First, the petition is not on the proper court-authorized petition for a writ of habeas corpus form. Instead, it is typed on plain white paper, and consists mainly of a copy of another brief regarding delay in the state court appeal process.

In addition, it appears the petition is without merit. The sole issue presented concerns the delay in Foster's state appeal. However, Foster states that the Oklahoma Court of Criminal Appeals decided his appeal on July 17, 1991. If true, Foster's claim for relief regarding the delay is now moot.

THUS, FOR ALL THE ABOVE REASONS, IT IS HEREBY ORDERED that Foster's petition be **dismissed.** Said dismissal is without prejudice, should Foster wish to file an amended petition on the proper petition for a writ of habeas corpus form.

SO ORDERED THIS 23rd day of February, 1993.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 25 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

WILLIAM DAVID JINKS,

Plaintiff,

vs.

LARRY FIELDS, et al.,

Defendants.

No. 93-C-127-B

EOD 2/25/93

ORDER

Plaintiff has filed a civil rights complaint pursuant to 42 U.S.C. § 1983, but has not submitted the proper $120.00 filing fee or a motion for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Accordingly, Plaintiff's complaint is hereby dismissed without prejudice for failure to pay the filing fee. See Local Rule 6(A). The court may reopen this action if Plaintiff submits either the proper filing fee or a motion for leave to proceed in forma pauperis within twenty (20) days. The Clerk of the Court shall send Plaintiff a motion for leave to proceed in forma pauperis form.

SO ORDERED THIS 19 day of Feb., 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 12 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

BILLY JOE PINTER, JR.,

Plaintiff,

vs.

JOHN DAVID ECHOLS,

Defendant.

No. 93-C-15-E

EOD 2/25/93

ORDER

Plaintiff filed with the court a motion for leave to proceed in forma pauperis and a civil rights complaint. Plaintiff's motion for leave to proceed in forma pauperis is hereby been granted. However, Plaintiff's action shall be dismissed without service at this time.

In Neitzke v. Williams, 490 U.S. 319 (1989), the Supreme Court recognized that a court is faced with two somewhat opposing responsibilities when determining which actions shall proceed with a plaintiff who is being allowed to commence an in forma pauperis action. First, a court must be sure that it complies with the "over-arching goal [of] the in forma pauperis statute: 'to assure equality of consideration for all litigants.'" Id. at 329, quoting Coppedge v. United States, 369 U.S. 438, 447 (1962). Commensurate with that responsibility, however, is the realization that § 1915(d) "is designed largely to discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants generally do not initiate because of the costs of bringing suit and because of the threat of sanctions for bringing

vexatious suits under Federal Rule of Civil Procedure 11." Id. at 327.

Consequently, courts have the responsibility to dismiss lawsuits which are frivolous or malicious. A complaint is frivolous where it lacks an arguable basis either in law or in fact. Id. at 325. "Dismissals on these grounds are often made sua sponte prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering such complaints." Id. at 324.

The Supreme Court recently revisited Neitzke in Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728 (1992). The Court held that a dismissal under § 1915(d) is entrusted to the discretion of the court entertaining the in forma pauperis action, and should only be reviewed for an abuse of discretion. Id. at 1734.

Applying Neitzke and Denton to the case at hand, this court finds that Plaintiff's complaint lacks an arguable basis in law. Plaintiff's detailed allegations against his criminal defense attorney fail because they do not show him as acting under color of state or federal law. See, e.g., Polk County v. Dodson, 454 U.S. 312 (1981).

Accordingly, Plaintiff's complaint shall be dismissed at this time. Said dismissal is without prejudice.

SO ORDERED THIS 12th day of February, 1993.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GLENN ROYAL,

Plaintiff,

vs.

NIKE, CORPORATION,

Defendant.

No. 93-C-107-E

EOD 2/25/93

ORDER

Plaintiff filed with the court a motion for leave to proceed in forma pauperis and a civil rights complaint. Plaintiff's motion for leave to proceed in forma pauperis is hereby been granted. However, Plaintiff's action shall be dismissed prior to service at this time.

In Neitzke v. Williams, 490 U.S. 319 (1989), the Supreme Court recognized that a court is faced with two somewhat opposing responsibilities when determining which actions shall proceed with a plaintiff who is being allowed to commence an in forma pauperis action. First, a court must be sure that it complies with the "over-arching goal [of] the in forma pauperis statute: 'to assure equality of consideration for all litigants.'" Id. at 329, quoting Coppedge v. United States, 369 U.S. 438, 447 (1962). Commensurate with that responsibility, however, is the realization that § 1915(d) "is designed largely to discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants generally do not initiate because of the costs of

bringing suit and because of the threat of sanctions for bringing vexatious suits under Federal Rule of Civil Procedure 11." Id. at 327.

Consequently, courts have the responsibility to dismiss lawsuits which are frivolous or malicious. A complaint is frivolous where it lacks an arguable basis either in law or in fact. Id. at 325. "Dismissals on these grounds are often made sua sponte prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering such complaints." Id. at 324.

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Plaintiff filed this action pursuant to 42 U.S.C. § 1983. To make out a cause of action under § 1983, a plaintiff must plead that (1) the defendants acting under color of state law (2) deprived the plaintiff of rights secured by the Constitution or federal statutes. See, e.g., Gibson v. United States, 781 F.2d 1334, 1338 (9th Cir. 1986), cert. denied, 479 U.S. 1054 (1987). Plaintiff's allegations against the Nike Corporation do not allege a violation of any specific constitutional or federal right, nor do they show Defendant to be acting under color of state law. In addition, Plaintiff's complaint is incomprehensible as he does not allege any facts, making only vague and conclusory allegations.

ACCORDINGLY, Plaintiff's complaint is hereby dismissed prior to service on Defendant. Said dismissal is without prejudice. Plaintiff shall have twenty (20) days to file an amended complaint attempting to correct the above-noted deficiencies, if he so wishes.

SO ORDERED THIS 23rd day of February, 1993.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

FILED

IN THE UNITED STATES DISTRICT COURT FEB 24 1993
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CANDIE PAPER)
)
Plaintiff,)
)
vs.) Case No. 91-C-947-B
)
MONTEREY HOUSE U.S.A., INC.,)
a Texas corporation, BHC)
ACQUISITION CORPORATION, d/b/a)
MONTEREY HOUSE/MONTEREY'S TEX)
MEX CAFE, an Oklahoma corporation,)
MONTEREY'S TEX MEX CAFE OF)
BARTLESVILLE, OKLAHOMA, and)
RUSSELL CASH,)
)
Defendants.)

O R D E R

Before the Court for consideration are the Defendants' Motion for Summary Judgment, Defendants' Second Motion for Entry of Judgment, Defendants' Application for Leave to File a Reply and to File a Brief in Excess of 10 pages and Plaintiff's Application to File Response to Defendants' Motion for Summary Judgment Out of Time, To File a Brief That Exceeds 25 Pages, and To Amend Plaintiff's Complaint.

Defendants, Monterey House U.S.A., Inc., BHC Acquisition Corporation and Monterey's Tex Mex Cafe of Bartlesville, Oklahoma (hereinafter "the Defendants" or "Monterey's")[1], filed their Motion for Summary Judgment on December 15, 1992, the deadline for filing dispositive motions. Plaintiff, Candie Paper ("Paper"), failed to

[1] Although Russell Cash was named as a Defendant in the Plaintiff's Complaint, a review of the record indicates he was not served and has not entered an appearance.

respond by December 30, 1992, as required by Local Rule 15(A). On January 22, 1993, Plaintiff's counsel filed an application for additional time to respond to Defendants' motion for summary judgment, claiming that he had failed to respond timely because of a "busy litigation schedule" and a "mistaken impression" regarding the appropriate response date. Plaintiff's counsel asked that he be given until January 29, 1993, to file a response.

In an Order filed January 29, 1993, this Court concluded that "no reasonable argument can be made for the belief that the deadline [for filing a response] was any date other than December 30, 1992." Nevertheless, Plaintiff's counsel was given every benefit of the doubt[2] and his application for extension of time was granted.

As of February 4, 1993, Plaintiff had still not filed a response or request for an additional extension of time and consequently Defendants filed their second motion for entry of judgment.[3] The following day, Plaintiff filed the application that is now before the Court (Plaintiff's application to file response out of time and to file a brief that exceeds 25 pages). Plaintiff's counsel states that he has been diligently working on the response everyday since receiving the Court's Order and has made every

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[2] Plaintiff was given this accommodating treatment because the scheduling order that allegedly caused the confusion was prepared by Defense counsel.

[3] Defendants' first motion for entry of judgment was filed January 27, 1993. Each motion asks the Court to grant the Defendants' motion for summary judgment due to the Plaintiff's failure to timely respond.

effort to be as terse as possible on each issue. Plaintiff also states that a copy of the response has been delivered to the Defendants, who object to its late filing.[4]

Rule 6(b) of the Federal Rules of Civil Procedure provides:

> When by these rules or ... by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) ... order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect ....

More than 60 days have now passed since the motion for summary judgment was filed. Plaintiff has twice asked for extensions of time after the deadline had passed. The second deadline (January 29, 1993) was a date requested by the Plaintiff. The Court concludes Plaintiff has failed to show excusable neglect for failing to file either a response to the Defendants' motion for summary judgment or a request for an extension of time prior to the January 29, 1993, deadline. A heavy workload is no excuse for failing to seek an extension prior to the expiration of the allotted time. For these reasons, Plaintiff's motion to file her response out of time and to file a brief in excess of 25 pages is hereby denied.

Absent a response, the Court will address Defendants' motion for summary judgment on the basis of the record before the Court at

---

[4] Plaintiff did not attach a copy of the response to the application and thus the Court has yet seen the response.

this time. Plaintiff's complaint proclaims that this case involves five separate causes of action: (1) a claim for violation of Plaintiff's civil rights pursuant to 42 U.S.C. §1981 and the Civil Rights Acts of 1964 and 1991; (2) a claim for grossly negligent entrustment pursuant to state law; (3) a claim for intentional infliction of emotional distress; (4) a claim for termination from employment in violation of a clear mandate of public policy; and, (5) a claim for assault and battery.

The uncontroverted material facts are as follows:

1. Paper began her employment with Defendants in February, 1989, as an hourly employee. (¶1 of Agreed Pretrial Order, filed February 3, 1993).

2. Paper was aware of Defendants' policy against sexual harassment and that employees could report incidents of sexual harassment. (Deposition of Candie Paper, p. 22, attached as Exhibit 1 to Defendants' motion for summary judgment).

3. Paper testifies that on one occasion she lost a button from her shirt while at work. She testifies that the manager, Russell Cash ("Cash"), would not allow her to leave work to change her shirt. (Deposition of Candie Paper, p. 123).

4. Paper alleges that Cash called her to the kitchen, called a cook's attention to Plaintiff, said "Look" and opened Plaintiff's shirt at the place of the missing button. (Deposition of Candie Paper, p. 124).

5. Plaintiff testifies that when Cash opened her shirt, he touched her shirt, not her breasts, for 3 or 4 seconds. (Deposition

of Candie Paper, pp. 147, 292). This incident occurred on December 11, 1989. (¶10 of Plaintiff's Complaint).

6. Plaintiff testifies she informed Cash he would get in trouble for this action. (Deposition of Candie Paper, p. 124).

7. Paper alleges that on several occasions after the blouse incident, Cash asked her what size bra she wore. (Deposition of Candie Paper, pp. 139,149,160).

8. Plaintiff testifies Cash massaged her neck on one occasion and she told him "Don't do it anymore." Paper testifies that he never massaged her neck again. (Deposition of Candie Paper, pp. 148-49).

9. Plaintiff testifies that Cash would brush against her side or back with his elbow or side when walking by her and he would also stand right beside her. (Deposition of Candie Paper, pp. 147-48).

10. Plaintiff testifies that she was never under the impression that she would be fired or "something bad would happen" if she didn't have sex with Cash. (Deposition of Candie Paper, pp. 149-50).

11. Plaintiff alleges that in response to Cash's repeated inquiry about her bra size, a co-employee (Jason) put his hand on her breast in an alleged attempt to guess her bra size. (Deposition of Candie Paper, p. 139).

12. Plaintiff alleges that this co-employee (Jason) put his hand on her breast on four or five different occasions and that Cash was present on two or three of the occasions. (Deposition of

Candie Paper, p. 160).

13. Plaintiff testifies that she responded by telling the co-employee, "That's gross; don't do that in front of people; don't even do it." (Deposition of Candie Paper, p. 160).

14. Plaintiff alleges that this co-employee (Jason) often made remarks about her body and the size of her breasts. (Deposition of Candie Paper, p. 140). Plaintiff alleges that Cash heard these comments being made and he just laughed. (Deposition of Candie Paper, p. 141).

15. Plaintiff testifies that she responded to the co-employee's remarks by saying "That's rude; that's gross." (Deposition of Candie Paper, p. 141).

16. Plaintiff testifies that she never complained to anyone about the co-employee's actions because her store manager, Cash, witnessed the events and just laughed. (Deposition of Candie Paper, p. 142).

17. Plaintiff never directly made a formal written complaint to Monterey's management regarding the actions of Cash. (Deposition of Candie Paper, p. 96).

18. Plaintiff's parents made a formal complaint to Defendants regarding Cash's actions. (Deposition of Candie Paper, pp. 235-37).

19. Mark Brown ("Brown"), Area Supervisor, was instructed to investigate the complaint initiated by Paper's parents. (Deposition of Candie Paper, p. 145).

20. Brown was unable to substantiate Plaintiff's claims.

(Deposition of Mark Brown, p. 21, attached to Defendants brief in support of Defendants' motion for summary judgment as Exhibit 3).

21. Cash was removed from the store during the investigation. Paper never worked with Cash again after her parents complained to Monterey's management. (Deposition of Candie Paper, pp. 235-36, 238).

22. Brown had a meeting with Paper and informed her of the results of the investigation (i.e. that he was unable to substantiate her allegations). He told Paper that the company had decided to keep Cash as her supervisor. (Deposition of Candie Paper, pp. 238-39). Plaintiff was also told that she was a good employee and the Company would love to have her continue to work at the restaurant. (Deposition of Candie Paper, p. 238).

23. After Paper was informed that her complaints were unsubstantiated and Cash would not be terminated, Paper told Brown she she would not work with Cash and she was quitting. (¶3 of Agreed Pretrial Order; Deposition of Candie Paper, p. 238).

24. Plaintiff alleges that her experiences at Monterey House affected her schoolwork negatively. (Deposition of Candie Paper, pp. 12-13).

25. Plaintiff testifies she often did not attend school and that family problems also contributed to her emotional distress. (Deposition of Candie Paper, pp. 13,16).

26. Plaintiff never complained of emotional distress or problems at Monterey House to a teacher, counselor or other school official. (Deposition of Candie Paper, pp. 108-109, 336).

27. Plaintiff never took medication or consulted a physician or psychiatrist for her emotional distress. (Deposition of Candie Paper, p. 319).

28. Paper was earning $3.75 an hour at the time that she left her employment with Defendants. (¶2 of Agreed Pretrial Order).

29. During her employment with Defendants, Paper was 14 and 15 years of age. (¶4 of Agreed Pretrial Order).

The Standard of Fed.R.Civ.P. 56

Motion for Summary Judgment

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Windon Third Oil & Gas v. FDIC, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

> "The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986). The evidence and inferences therefrom must be viewed in a light most favorable to the nonmoving party. Conaway

v. Smith, 853 F.2d 789, 792 n. 4 (10th Cir. 1988). Unless the Defendants can demonstrate their entitlement beyond a reasonable doubt, summary judgment must be denied. Norton v. Liddel, 620 F.2d 1375, 1381 (10th Cir. 1980).

A recent Tenth Circuit Court of Appeals decision in Committee for the First Amendment v. Campbell, 962 F.2d 1517 (10th Cir. 1992), concerning summary judgment states:

> "Summary judgment is appropriate if 'there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.' . . . Factual disputes about immaterial matters are irrelevant to a summary judgment determination. . . We view the evidence in a light most favorable to the nonmovant; however, it is not enough that the nonmovant's evidence be 'merely colorable' or anything short of 'significantly probative.' . . .
>
> "A movant is not required to provide evidence negating an opponent's claim. . . . Rather, the burden is on the nonmovant, who 'must present affirmative evidence in order to defeat a properly supported motion for summary judgment.' . . . After the nonmovant has had a full opportunity to conduct discovery, this burden falls on the nonmovant even though the evidence probably is in possession of the movant. (citations omitted). *Id.* at 1521."

Legal Analysis and Authorities

Plaintiff's first cause of action alleges that Defendants' conduct violated her civil rights under 42 U.S.C §1981 and the Civil Rights Acts of 1964 and 1991.

Defendants contend that the Civil Rights Act of 1991 does not apply retroactively and therefore is not applicable to Plaintiff's claims. In this case, all of the actions alleged by Plaintiff

occurred prior to November 21, 1991, the effective date of the Act. Therefore, any rights under the 1991 Civil Rights Act can only apply in this case, if the Act's provisions were intended to be applied retroactively.

On its face, the Civil Rights Act of 1991 is ambiguous as to whether it was intended to be applied retroactively or prospectively. Vogel v. City of Cincinnati, 959 F.2d 594 (6th Cir. 1992), *cert. denied* 113 S.Ct. 86 (1992). The United States Supreme Court has issued two lines of authority on the issue of whether statutes should be applied retroactively when congressional intent is unclear. *See*, Bradley v. School Board of City of Richmond, 416 U.S. 696 (1974)(a court should apply the law in effect at the time it renders its decision unless retroactive application would result in manifest injustice) and Bowen v. Georgetown University Hospital, 488 U.S. 204 (1988) (retroactivity is not favored and thus congressional enactments will not be applied retroactively unless their language requires such).

The majority of courts, including this one, that have addressed this issue have followed Bowen and concluded that the Civil Rights Act of 1991 should not be applied retroactively. Vogel, 959 F.2d 594; Luddington v. Indiana Bell Telephone Co., 796 F.Supp. 1550 (S.D. Ind. 1990), *aff'd* 966 F.2d 225 (7th Cir. 1992); Mozee v. American Commercial Marine Serv. Co., 963 F.2d 929 (7th Cir. 1992) *cert. denied* 113 S.Ct. 207 (1992); Johnson v. Uncle Ben's Inc., 965 F.2d 1363 (5th Cir. 1992) petition for *cert.* filed 61

U.S.L.W. 3356 (1992); Fray v. Omaha World Herald Co., 960 F.2d 1370 (8th Cir. 1992); Van Meter v. Barr, 803 F.Supp. 444 (D.D.C. 1992); Jackson v. Integra, Case No. 91-C-001-E (N.D. Okla. 1992); Jackson v. Readnour, Case No. 91-C-411-B (N.D. Okla. June 15, 1992); Horner v. Management and Training Corp. and Tulsa Job Corps, No. 91-C-835-B (N.D.Okla. June 15, 1992); Kendall v. Watkins, Case No. 91-C-292-B (N.D.Okla. July 29, 1992) and Sowers v. Ram-Seco, Inc., Case No. 91-456-P (E.D. Okla. 1992); *but see*, Davis v. City and County of San Francisco, 976 F.2d 1536 (9th Cir. 1992)("Guided by the plain language of the statute and this cardinal rule of interpretation, we conclude that Congress intended the courts to apply the Civil Rights Act of 1991 to cases pending at the time of its enactment and to pre-Act conduct still open to challenge after that time.") The Tenth Circuit Court of Appeals has not yet addressed the retroactive application of the Act.

The Equal Employment Opportunity Commission (EEOC) has also concluded that neither the language nor the legislative history of the Act provide a clear sense of Congress' intent on the subject of retroactivity. The EEOC has thus interpreted the Act to apply only to claims arising after the effective date of the Act. "Policy Guidance on Application of Damages Provisions of the Civil Rights Act of 1991 to Pending Charges and Pre-Act Conduct," EEOC Notice 915.002, *reprinted in* EEOC Compl.Man. ¶2096 (CCH)(Dec. 27, 1991).

This Court is not convinced by the Ninth Circuit's reasoning in Davis that the face of the 1991 Act clearly indicates an intent to make the Act retroactive. Therefore, this Court will maintain

its stance with the majority of Circuit Courts that have addressed the issue and prohibit retroactive application of the 1991 Act. For these reasons, Plaintiff has failed to state a claim pursuant to the 1991 Civil Rights Act and Defendants' motion for summary judgment as to this claim should be granted.

Furthermore, any §1981 claim the Plaintiff may be attempting to bring under the 1964 Civil Rights Act is equally flawed. Prior to the effective date of the 1991 Civil Rights Act, a claim under §1981 could only be brought if at the time of the formation of the contract, the employer intentionally refused to enter into the contract with the employee on racially neutral terms. Patterson v. McLean Credit Union, 491 U.S. 164 (1989). Paper's allegations all relate to post-formation conduct and sexual rather than racial bias or discrimination. Thus, Plaintiff has failed to state a claim pursuant to §1981 and Defendants' motion for summary judgment as to this claim should be granted.

Plaintiff's first cause of action also alleges a claim pursuant to Title VII for hostile work environment sexual harassment. Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., makes it "an unlawful employment practice for an employer ... to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1).

Hostile work environment harassment arises when sexual conduct "has the purpose or effect of unreasonably interfering with an

individual's work performance or creating an intimidating, hostile, or offensive working environment. Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57 (1986). To be actionable under Title VII, the conduct must be "severe," "pervasive," and it must result in the alteration of the conditions of the victim's working environment. Id.

To prevail on a sexual harassment claim, Plaintiff must show:

1. the employee belongs to a protected sexual class;
2. the employee was subjected to unwelcome sexual harassment;
3. the harassment complained of was based on sex;
4. the harassment complained of affected a term, condition, or privilege of employment;
5. the employer knew or should have known of the harassment in question and failed to take proper remedial action.

Hall v. Gus Construction Co., 842 F.2d 1010 (8th Cir. 1988).

Defendants contend that Plaintiff's actions were insufficient to advise Cash that she was offended or to place Defendants on notice of the alleged harassment. Defendants further contend that upon receiving the report of the blouse incident from Plaintiff's parents, management promptly investigated the Complaint.

Plaintiff has alleged harassment by her coworkers and her supervisor. Specifically, she contends that a coworker made sexually suggestive comments to her and on several occasions made sexual contact with her, all in the presence of her supervisor, who made no effort to stop the activity. (Deposition of Candie Paper, pp. 139-141,160). Plaintiff also contends that she told the coworker that she considered his comments rude and gross and told

him not to touch her breasts because it embarrassed her. (Deposition of Candie Paper, pp. 141,160).

A company/employer can be held liable for sexual harassment by supervisors and/or by coworkers. Baker v. Weyerhaeuser Co., 903 F.2d 1342 (10th Cir. 1990). A company will be held liable if management level employees knew, or in the exercise of reasonable care should have known, about a barrage of offensive conduct. Hall v. Gus Construction Co., 842 F.2d 1010 (8th Cir. 1988).

Plaintiff's allegations are more than sufficient to establish a fact-question on the issue of whether Cash, as an agent of Monterey, had actual and/or constructive knowledge of the alleged harassment and failed to take remedial action. Paper's uncontested desposition testimony creates a genuine issue concerning whether Defendants' took sufficient remedial action to stop the improper conduct. The simple fact that "upper management" conducted an investigation after receiving the formal complaint from Plaintiff's parents and decided to maintain the status quo does not necessarily relieve Defendants of liability. For the above stated reasons, the Court concludes Defendants' motion for summary judgment on the Plaintiff's Title VII claim should be denied.

Plaintiff's second cause of action is "a claim for grossly negligent entrustment pursuant to state law." (Plaintiff's Complaint ¶1). Paper alleges in her Complaint that Monterey's "negligently entrusted Russell Cash to the position of supervisor and failed to maintain a proper environment conducive to workplace fairness, respect, decency and human rights."

Negligent entrustment actions are appropriate in bailment relationships. Casebolt v. Cowen, 829 P.2d 352 (Colo. 1992). Generally, negligent entrustment theory is applied where one negligently permits another to use a dangerous instrumentality (such as an automobile) in circumstances where he knows or should know that such use may create an unreasonable risk of harm to others. Barnes v. Gaines, 668 P.2d 1175 (Okla.App. 1983); *vacated in part* 668 P.2d 1126; Berethy Walt Failor's, Inc., 653 P.2d 280 (Wash. 1982). Plaintiff has made no such allegations in this case and thus has failed to state a claim for negligent entrustment. The Court is unwilling to torture this common law tort action to fit the instant case. Therefore, Defendants' motion for summary judgment as to the negligent entrustment claim is granted.

Plaintiff may have intended to allege a negligent hiring claim rather than a negligent entrustment claim. However, Plaintiff has failed to state the elements of a negligent hiring claim. Plaintiff has not asserted that Cash had any dangerous proclivities, that Defendants knew of such, or that Defendants hired or retained Cash with knowledge of such proclivities. Thus, to the extent Plaintiff intended to bring a negligent hiring claim, Defendants' motion for summary judgment is also granted.

Plaintiff has filed an application to amend her complaint to allege a new theory of negligence. Plaintiff contends Defendants were also negligent by their per se violation of the Oklahoma Child Labor Laws, 40 O.S. §76. The deadline for amending the pleadings was June 12, 1992, and the discovery cutoff was August 30, 1992.

The Plaintiff has failed to provide sufficient cause for allowing an amendment to the complaint at this late date and has ignored deadlines throughout this litigation. Furthermore, the record before the court fails to establish any violation of 40 O.S. §76. For these reasons, Plaintiff's application to amend the Complaint and add a new theory of recovery is denied. The Defendants' motion for summary judgment is granted as to all negligence claims asserted by Plaintiff.

Plaintiff's third cause of action is a claim for termination from employment in violation of a clear mandate of public policy. Burk v. K-Mart, 770 P.2d 24 (Okla. 1989). Plaintiff's complaint states:

> 12. The Defendant Monterey House/ Monterey's Tex Mex Cafe of Bartlesville caused the constructive and wrongful discharge of Miss Paper by absolutely refusing to stop the conduct of which she complained.
>
> 13. The termination of Miss Paper was in retaliation for her having initiated a criminal complaint against Cash by reporting his criminal activity to the Bartlesville Police Department; and/or Miss Paper was terminated for having complained about the Incident to the corporate defendants, and requesting changes in her schedule to minimize her contact with Cash in order to avoid further conflict.

Plaintiff clearly and unequivocally stated in her deposition that she quit her job when she was told that Cash would continue to be the manager of the restaurant. (Deposition of Candie Paper, p. 238). There is no evidence that Defendants terminated Plaintiff in retaliation for filing complaints with the police and corporate management. Instead, Plaintiff claims she chose to quit her job

rather than continue working with Cash.

To establish a Burk tort, Plaintiff must show that her employer affirmatively terminated her in violation of public policy. Burk v. K-Mart, 770 P.2d 24 (Okla. 1989). In this case, Plaintiff has failed to establish that she was terminated. Therefore, Plaintiff has failed to establish an element of her Burk claim and Defendant's motion for summary judgment on this claim should be granted.[5]

Plaintiff's fourth cause of action is for intentional infliction of emotional distress. Oklahoma recognizes an independent tort action for intentional infliction of emotional distress, also known as the tort of outrage. Eddy v. Brown, 715 P.2d 74,76 (Okla. 1986). Recovery for intentional infliction of emotional distress requires proof that Defendant's conduct was extreme and outrageous. Haines v. South Community Hospital Management, Inc., 793 P.2d 303 (Okla.App. 1990).

Defendants argue that the conduct alleged by Plaintiff is not sufficiently extreme and outrageous to amount to an actionable tort. Defendants further contend that even if Cash's conduct was sufficiently outrageous, it did not occur within the scope of his

[5] The action that triggers a Burk tort is the employers' termination of an employee in violation of public policy. Other conduct by the employer which may be contrary to public policy but does not affirmatively terminate employment, will not suffice to establish a Burk tort. Thus, Plaintiff's allegation she was forced to quit because the Defendants refused to fire Cash does not create an independent cause of action pursuant to Burk. To the extent Plaintiff was attempting to state a Burk tort based on a constructive discharge theory, Defendants' motion for summary judgment is granted.

employment and thus his employers can not be held responsible under a *respondeat superior* theory.

In a similar case, the Tenth Circuit Court of Appeals recently affirmed a jury verdict against an employer-corporation for intentional infliction of emotional distress where its officers and supervisors were aware of the harassment of a female employee but failed to take action against the co-employee who was doing the harassing. Baker v. Weyerhaeuser Co., 903 F.2d 1342 (10th Cir. 1990). The Appeals Court explained that the corporate employer was not held liable on an agency or *respondeat superior* basis, but rather was held liable based on its own conduct, "namely, its utter failure through its officers and supervisors to take action against the co-employee, a known sexual harasser of females." Baker, 903 F.2d at 1347.

In the case at bar, Plaintiff has testified that her supervisor, Russell Cash, was aware that a co-employee was repeatedly making unwelcome sexual remarks to her and making sexual contact with her (placing his hand on her breast). Plaintiff testified that Cash was not only aware of this activity, he participated by asking the Plaintiff her bra size and laughing when the co-employee made similar remarks or touched the Plaintiff's breast. According to Paper, Cash took no action against the co-employee to stop the comments or fondling.[6] Plaintiff also

[6] Although he is a supervisor, and agent of Defendants, Cash's improper comments and touching can not be imputed to his employer if such actions were not in furtherance of the business. Baker, 903 F.2d at 1346. However, his alleged knowledge of improper conduct by

testified that her parents filed a complaint with corporate management regarding Cash's actions and that the Defendants refused to take remedial action against Cash to stop the improper conduct.

With a claim for intentional infliction of emotional distress, the trial court must initially determine as a matter of law whether the alleged conduct is sufficiently extreme and outrageous to allow recovery. Haines v. South Community Hospital Management, Inc., 793 P.2d 303 (Okla.App. 1990); Breeden v. League Services Corp., 575 P.2d 1374 (Okla. 1978). The issue should only be submitted to the jury if reasonable minds could differ over whether conduct was sufficiently extreme and outrageous. Id.

Viewing the evidence in a light most favorable to Plaintiff, the Court concludes that reasonable minds could differ over whether Cash's failure to act when a 15 year-old employee was being fondled and subjected to unwelcome sexual comments was sufficiently extreme and outrageous; and also, whether the Defendants' failure to take remedial action against Cash after being made aware of Paper's allegations was sufficiently extreme and outrageous. However, Plaintiff will indeed have a heavy burden at trial, as suggested recently by the Third Circuit:

> [I]t is extremely rare to find conduct in the employment context which will rise to the level of outrageousness necessary to provide a basis for recovery for the tort of intentional infliction of emotional distress ... as a general rule, sexual harassment alone does not rise to the level necessary to make out a cause of action for intentional infliction of

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other employees and his alleged failure to take appropriate against them, can be imputed to the corporation. Id.

emotional distress.

Andrews v. City of Philadelphia, 5 IER Cases 1471 (3rd Cir. 1990).

To establish liability for the tort of intentional infliction of emotional distress, Plaintiff is required to establish severe emotional distress as well as extreme and outrageous conduct. Plaintiff's complaint alleges that Defendants' conduct caused her "mental anguish and pain and suffering resulting from nightmares she now experiences as a result of the physical and psychological stress she suffered at the hands of the defendant." (Plaintiff's Complaint ¶17). In her deposition, Plaintiff states she missed school due to her problems at Monterey's (Deposition of Candie Paper, p.12). Defendants' point out that Paper never sought help for her alleged emotional distress and that Paper may have been suffering distress as a result of other events in her life. The Court concludes that material questions of fact exist on the issue of whether Paper indeed suffered severe emotional distress as a result of Defendants' conduct. For these reasons, Defendants' motion for summary judgment on the Plaintiff's claim of intentional infliction of emotional distress should be denied.[7]

Plaintiff's fifth cause of action is a claim for assault and

[7] Defendants argue that Plaintiff's claim for intentional infliction of emotional distress is precluded by the exclusivity provision of the Oklahoma Workers' Compensation Act (the "Act"). See 85 O.S. 1981 §11 and 12. The Act provides the exclusive remedy for all "accidental" injuries occurring during the employment. An "intentional" injury is not "accidental" for purposes of the Act and is therefore not covered by the Act. Tyner v. Fort Howard Paper Co., 708 F.2d 517, 518 (10th Cir. 1983). Accepting Plaintiff's allegations as true, the Court concludes that any injury suffered by Plaintiff was not "accidental" and thus the exclusivity provisions of the Act do not prohibit this claim.

battery. According to Plaintiff's Complaint, this claim arises from the blouse incident, in which Cash allegedly opened Paper's blouse and exposed her to other employees. Plaintiff now seeks to recover from her employer, the corporate defendants, for this alleged assault and battery. Employers are responsible for the intentional wrongs of their employees that are committed in the furtherance of the employment. Baker v. Weyerhaeuser Co., 903 F.2d 1342, 1346 (10th Cir. 1990)(quoting Hunter v. Allis-Chalmers Corp., Engine Div., 797 F.2d 1417 (7th Cir. 1986); Roebuck v. Atchison, T.& S.F. Ry. Co., 99 Kan. 544, 162 P. 1153 (1917). "The tortfeasing employee must think (however misguidedly) that he is doing the employer's business in committing the wrong." Baker, 903 F.2d at 1346. The Plaintiff has provided no evidence that Cash believed he was doing restaurant business when he opened Paper's blouse. Thus, Defendants can not be held liable under a *respondeat superior* theory for the alleged sexual assault of Paper.

As discussed above, "an employer is directly liable (that is, independently of *respondeat superior*) for those torts committed against one employee by another, whether or not committed in furtherance of the employer's business, that the employer could have prevented by reasonable care in hiring, supervising, or if necessary firing the tortfeasor." Id. Plaintiff has provided no evidence that Defendants could have prevented Cash from opening Paper's blouse or brushing up against her. There is no evidence that Cash had assaulted anyone in the past or that Defendants failed to use reasonable care in hiring and supervising Cash. In fact, the corporate-employer was

not made aware of the alleged assault until Plaintiff's parents filed a complaint. Paper states that after the complaint was filed, she never worked with Cash again. There is no evidence in the record that the assault was foreseeable or preventable by the corporate defendants. For this reason, Plaintiff's claim against the Defendants for assault and battery is insufficient and Defendants motion for summary judgment as to this claims is granted.

Defendants have filed an application to file a brief in reply to Plaintiff's response. As set out above, Plaintiff's application to file a response out of time has been denied and thus Defendants motion to file a reply and to file a brief in excess of 10 pages is moot.

For all the reasons set out above, Defendants' motion for summary judgment and Defendants' second motion for entry of judgment are hereby GRANTED as to all of Plaintiff's claims except her claim under Title VII and her pendant claim for intentional infliction of emotional distress. Plaintiff's motion to amend her complaint is hereby DENIED. Plaintiff's application to file a response out of time and to file a brief in excess of 25 pages is hereby DENIED. Defendants' application to file a reply and to file a brief in excess of 10 pages is hereby DENIED.

IT IS SO ORDERED THIS 24 DAY OF FEBRUARY, 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

THOMAS R. SLIGAR,

Plaintiff,

v.

TOM L. TEEL, ET AL,

Defendants.

92-C-652-B

ORDER

Pro se Plaintiff Thomas Sligar, an inmate at the Dick Connor Correctional Center ("DCCC"), sued Ron Champion, Warden of the Dick Connor Correctional Center, under 42 U.S.C. § 1983 (1982) alleging violations of his First and Fourteenth Amendment Rights.

Specifically, Plaintiff alleges the following civil rights violations were committed by the Defendant: (1) Denial of the right to practice his religion; (2) Denial of the right to free exercise of his religion without fear of disciplinary action; and (3) Denial of his right to Due Process by the formation of a committee to judge his religious sincerity.

For the reasons set forth below, the Court finds that Plaintiff's action is frivolous under 28 U.S.C. §1915(d) since he cannot make a rational argument on the law or the facts to support his claim. Therefore, the Plaintiff's Complaint is DISMISSED. [1]

[1] *The defendant argues that this case should be dismissed due to plaintiff's failure to exhaust state remedies. Case law indicates that in failure to exhaust situations, this Court should grant a 90-day continuation to allow plaintiff to exhaust his remedies. See McKart v. United States, 395 U.S. 185, 89 S.Ct. 1657 (1969); Rocky v. Vittorie, 813 F.2d 734 (5th Cir. 1987); Patsy v. Board of Regents of State of Florida, 457 U.S. 496, 102 S.Ct. 2557, 73 L.Ed.2d 172 (1982). However, in this case, this Court finds that a continuation would be futile since the facts indicate a frivolous claim, better dealt with under 28 U.S.C. 1915(d).*

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I. Summary of Facts

Plaintiff is an inmate at the Dick Connor Correctional Center in Hominy, Oklahoma.[2] On July 9, 1992, Plaintiff filed a Civil Rights Complaint pursuant to 42 U.S.C. §1983 and a Motion for Leave to Proceed In Forma Pauperis and Supporting Declaration. Defendant responded with a Motion to Stay Proceedings and Request for Order Requiring Special Report. Such request was granted by this Court's Order Facilitating §1915(d) (Frivolity) Review. The Special Report was filed along with the defendant's Motion to Dismiss on September 28, 1992.[3] Plaintiff filed his Response to Defendant's Motion to Dismiss on November 18, 1992.

II. Legal Analysis

The initial question is whether or not Plaintiff's Complaint is frivolous. "The court . . . may dismiss [an in forma pauperis] case . . . if satisfied that the action is frivolous or malicious." 28 U.S.C. § 1915(d) (1982). Furthermore, an in forma pauperis case is deemed to be frivolous if

> . . . the Plaintiff cannot make a rational argument on the law or on the facts to support his claim, and that this determination may be made on the basis of an administrative report.[4] *Phillips v. Carey*, 638 F.2d 207 (10th Cir. 1981).

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[2] *Plaintiff was convicted of three counts of assault and battery of a police officer and one count of false impersonation. He is serving a 40-year sentence.*

[3] *The Report of Review of Factual Basis of Claims Asserted in Civil rights Complaint Pursuant to U.S.C. § 1983 included several attachments. These included: (1) copy of the Application and review Procedures for Exemption to the DCCC Inmate Grooming Code, (2) copy of the Practice of Religion by Inmates, (3) affidavit by Marvin Keenan, chaplain at the DCCC, (4) copy of plaintiff's Grooming Code Request dated July 10, 1992, (4) copy of plaintiff's civil rights complaint filed in this action, (5) copy of plaintiff's consolidated record card indicating plaintiff's religion as Baptist, and (6) copy of a memorandum to Randy Cook, Deputy Warden at DCCC, dated August 14, 1992, indicating that plaintiff still had not submitted an essay for his grooming code request.*

[4] *This administrative report is commonly known as a Martinez report. These reports are intended to provide information for the district court which will enable it to decide preliminary matters, . . . especially in §1983 actions. Martinez v. Aaron, 570 F.2d 317 (10th Cir. 1978).*

In order to state a claim under §1983, a Plaintiff must allege facts demonstrating two elements:

> First, Plaintiff must prove that the defendant has deprived him of a right secured by the Constitution and laws of the United States.
>
> Second, Plaintiff must show that the defendant deprived him of this constitutional right "under color of any statute, ordinance, regulation, custom or usage of any State or Territory. *Meade v. Grubbs*, 841 F.2d 1512, 1526 (10th Cir. 1988) citing to *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 150, 90 S.Ct. 1598.

Plaintiff alleges that his Constitutional right to freely exercise his religion is being violated by DCCC's Grooming Code. In *Turner v. Safely, 482 U.S. 78, 107 S.Ct. 2254, 2261, 96 L.Ed.2d 64 (1987)*, the Court stated the general test: "When a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." To determine if DCCC's grooming code regulations are reasonable under *Turner*, this Court must consider: "(1) Whether the regulation has a logical connection to the legitimate governmental interests invoked to justify it; (2) Whether there are alternative means of exercising the rights that remain open to the inmates; (3) The impact that accommodation of the asserted constitutional right will have on other inmates, guards and prison resources; and (4) The presence or absence of ready alternatives that fully accommodate the prisoner's rights at de minimus costs to valid penological interests." *Turner, 482 U.S. at 89-90, 107 S.Ct. at 2262.*

With regard to the first factor, "the governmental objective must be a legitimate and neutral one." *Turner, 482 U.S. at 89, 107 S.Ct at 2262.* "Prison regulations regarding hair length and shaving are rationally related to substantial government interests in maintaining prison security and order. . ." *Fromer v. Scully, 874 F.2d 69, 75 (2nd Cir. 1989).* Thus, there

is a legitimate government interest in a "grooming" code.

The correct inquiry with respect to the second factor is "whether the inmates are deprived of all means of expression." ***O'Lone** v. Estate of Shabazz, 482 U.S. 342, 352, 107 S.Ct. 2400, 2406, 96 L.Ed.2d 282 (1987).* "It is appropriate to see whether under these regulations, Plaintiff retains the ability to participate in other religious ceremonies." *Id.* The DCCC Field Manual provides for "access to religious resources, services and/or counseling" in its Practice of Religion by Inmates.[5] Furthermore, Plaintiff has not alleged any other violations committed by DCCC in preventing or inhibiting Plaintiff's free exercise of religion. Consequently, Plaintiff is not being denied all religious activity in violation of the First Amendment.

When determining the impact that accommodation would have on other inmates, guards and prison resources, this Court must be mindful that "accommodation of an asserted right will have a significant 'ripple effect' on fellow inmates or on prison staff, and should be particularly deferential to the informed discretion of the corrections officials." *Turner, 482 U.S. at 90, 107 S.Ct. at 2262.* "Central to all other corrections goals is the institutional consideration of internal security . . ." *Pell v. Procunier, 417 U.S. 817, 823, 94 S.Ct. 2800, 2804, 41 L.Ed.2d 495 (1974).* Grooming patterns are significant security considerations since "a long beard, like long hair, could make identification more difficult and help prisoners hide contraband." ***Dunavant** v. Moore, 907 F.2d 77, 79 (8th Cir. 1990).* Thus, without an argument to the contrary from Plaintiff, this Court will defer to DCCC's discretion with regard to grooming requirements.

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[5] *Martinez report, Attachment B.*

The fourth factor requires the Plaintiff "to show that there are obvious, easy alternatives . . ." *Fromer, 874 F.2d at 76 citing Turner, 482 U.S. at 90, 107 S.Ct. at 2262.* "Prison officials do not have to set up and shoot down every conceivable alternative . . . " *Turner, 482 U.S. at 90, 107 S.Ct. at 2262.* Plaintiff has failed to meet his burden since he has not suggested any alternative methods for DCCC to protect their penological interests while granting Plaintiff's grooming code exemption.

Plaintiff, in his Complaint, fails to state any facts in support of his allegations. He simply states that his First Amendment right to freedom of religion is being violated because he is not being allowed to "grow long hair and not shave as did the men of the Bible time."[6] He fails to state the religion that he claims to be worshipping and why compliance with DCCC's grooming code would violate his religious beliefs.

Furthermore, the Martinez report indicates that Plaintiff filed such a request on the same day he filed this action.[7] However, Plaintiff failed to include the necessary written explanation with his request that explained why his religion required a grooming code exemption. As such, Plaintiff has failed to explain to both the grooming code committee at DCCC and to this Court why he is entitled to a grooming code exemption.

In Plaintiff's Response to Defendant's Motion to Dismiss, Plaintiff again fails to allege any facts to support his accusations.[8] As stated in Mitchell v. King, "the Court disregards

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[6] *Complaint at 7.*

[7] *It appears that plaintiff, in a last-minute fashion, was attempting to comply to the rule requiring exhaustion of state remedies before filing a cause of action in this Court.*

[8] *In Plaintiff's Response to Defendant's Motion for Summary Judgment, he states: "This Court's function on a Rule 12(b)(6) motion is not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff's complaint alone is legally sufficient to state a claim for which relief might be granted; Miller v. Glanz, 948 F.2d 1562 (10th Cir. 1991). Allegations in the plaintiff's complaint are presumed true; Curtis Ambulance of Florida, Inc. v. Board of County Comm'rs, 811 F.2d 1371 (10th Cir. 1987)." While plaintiff's*

unsupported conclusions." 537 F.2d 385, 386 (10th Cir. 1976). It is well-settled law in the Tenth Circuit that

> . . . bald conclusions, unsupported by allegations of fact, are legally insufficient; and pleadings containing only such conclusory language may be summarily dismissed or stricken without a hearing. *Lorraine v. United States*, 444 F.2d 1 (10th Cir. 1971); ***Atkins*** *v. Kansas*, 386 F.2d 819 (10th Cir. 1967).

Plaintiff's Complaint is frivolous, failing to demonstrate any facts to support Plaintiff's allegations that DCCC is violating his First Amendment rights. Therefore, Plaintiff's Complaint is dismissed as frivolous pursuant to 28 U.S.C. §1915(d).

SO ORDERED THIS 24 day of Feb, 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

understanding of the law may be correct, he has failed to allege any facts to substantiate his claims. Similarly, plaintiff's Complaint is just as fact deprived as his Response.

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

KATHLEEN LOGAN,

Plaintiff,

vs.

THE AETNA CASUALTY AND SURETY COMPANY,

Defendant,

Case Number 92-C-730-B

ADMINISTRATIVE CLOSING ORDER

The Parties having been ordered to arbitration and these proceedings have been stayed thereby, at the suggestion of the Court and by agreement of the Parties, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the Parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If, within 60 days of a final adjudication of the arbitration proceedings, the Parties have not by an appropriate motion to reopen for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 24 day of Feb., 1993.

Thomas R. Brett

UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	
vs.	**CIVIL ACTION NO. 92-C-697-B**
PROCEEDS FROM THE SALE OF REAL PROPERTY KNOWN AS 7606 EAST 80TH PLACE, TULSA, OKLAHOMA, IN THE SUM OF TWENTY-ONE THOUSAND ONE HUNDRED FORTY-TWO AND 33/100 DOLLARS ($21,142.33), WHICH IS REPRESENTED BY CASHIER'S CHECK NO. 148640 DATED JULY 17, 1992, PURCHASED BY FIRST MORTGAGE CORP., PAYABLE TO THE UNITED STATES DEPARTMENT OF JUSTICE, Defendant.	

JUDGMENT OF FORFEITURE

IT NOW APPEARS that the forfeiture proceeding herein has been fully compromised and settled. Such settlement more fully appears by the written Stipulation for Forfeiture entered into by and between plaintiff, United States of America, and Claimant Mary Jacqueline Meyer Blair, and filed herein, which Stipulation for Forfeiture is incorporated by reference.

It further appearing that there are no potential claimants to the sum of Six Thousand One Hundred Forty-two and 33/100 Dollars ($6,142.33), representing a portion of the defendant proceeds from the sale of real property known as 7606 East 80th Place, Tulsa, Oklahoma, and that no other person or entity has any

right, title, or interest in the Six Thousand One Hundred Forty-two and 33/100 Dollars ($6,142.33).

NOW, THEREFORE, on motion of Catherine J. Depew, Assistant United States Attorney for the Northern District of Oklahoma, and with the consent of Mary Jacqueline Meyer Blair, pursuant to the Stipulation for Forfeiture on file herein, the Court finds as follows:

That the verified Complaint for Forfeiture In Rem was filed in this action on the 7th day of August 1992; the Complaint alleges that the defendant proceeds are subject to forfeiture pursuant to 18 U.S.C. §§ 981 and 1955.

That a Warrant of Arrest and Notice In Rem was issued by the clerk of this court on the 7th day of August 1992.

That the United States Marshals Service personally served a copy of the Complaint for Forfeiture In Rem and the Warrant of Arrest and Notice In Rem on the defendant proceeds on the 20th day of August 1992.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the sum of Six Thousand One Hundred Forty-two and 33/100 Dollars ($6,142.33), which sum represents a portion of the defendant proceeds from the sale of the real property known as 7606 East 80th Place, Tulsa, Oklahoma, is condemned as forfeited to the United States of America, for disposition according to law.

IT IS FURTHER ORDERED by the Court that the United States Marshals Service shall withhold from the Twenty-one Thousand One Hundred Forty-two and 33/100 Dollars ($21,142.33) defendant proceeds seized from the Claimant, the sum of Fifteen Thousand Dollars ($15,000.00), which shall be paid to the United States Department of the Treasury, Internal Revenue Service, to be applied toward the outstanding federal income tax liability of the Claimant, Mary Jacqueline Meyer Blair, Social Security No. 440-34-9641.

ENTERED this 24th day of Feb 1993.

S/ THOMAS R. BRETT

THOMAS R. BRETT, Judge of the
United States District Court for the
Northern District of Oklahoma

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney

CATHERINE J. DEPEW
Assistant United States Attorney

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SCOTT O'DELL HINDS, an individual,	)	
	)	
Plaintiff,	)	No. 91-C-915-B
	)	
v.	)	
	)	
PEACHTREE PATIENT CENTER, INC., a Georgia corporation; PEACHTREE PATIENT CENTER CORPORATION; a Georgia corporation; INVACARE CORPORATION, an Ohio corporation; WHEELCHAIR HOUSE, LTD., a Colorado corporation; BILL TUTTLE, an individual; and CRAIG HOSPITAL, a Colorado corporation,	)	
	)	
Defendants.	)	

ORDER OF DISMISSAL WITH PREJUDICE FOR DEFENDANT CRAIG HOSPITAL, INC.

THIS MATTER having come before this Court upon the Stipulation for Dismissal with Prejudice by counsel for the Plaintiff and counsel for the Defendant CRAIG HOSPITAL, a Colorado corporation, and the Court having read the same and being fully advised in the premises;

IT IS ORDERED that the above-captioned action and all causes of action arising therefrom are dismissed with prejudice as to Defendant CRAIG HOSPITAL, each party to pay his own costs.

DONE this 24 day of Feb, 1993.

BY THE COURT:

S/ THOMAS R. BRETT

U.S. DISTRICT COURT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SCOTT O'DELL HINDS, an individual,

Plaintiff,

vs.

PEACHTREE MEDICAL RENTALS, INC., a Georgia corporation; PEACHTREE PATIENT CENTER, INC., a Georgia corporation; PEACHTREE TECHNOLOGIES, INC., a Georgia corporation; PEACHTREE PATIENT CENTER CORPORATION, a Georgia corporation; INVACARE CORPORATION, an Ohio corporation; WHEELCHAIR HOUSE, LTD., a Colorado corporation; BILL TUTTLE, an individual; CRAIG HOSPITAL, a Colorado corporation,

Defendants.

No. 91-C-915-B

ORDER OF DISMISSAL

This matter comes on for hearing on the Joint Stipulation of the Plaintiff, Scott O'Dell Hinds, and Defendant, Wheelchair House, Ltd. for a dismissal with prejudice of the above captioned cause against Wheelchair House, Ltd. The Court, being fully advised, having reviewed the Stipulation, finds that the parties herein have entered into a compromise settlement covering all claims involved in this action, which this Court hereby approves, and that the above entitled cause should be dismissed with prejudice to the filing of a future action as to Wheelchair House, Ltd. pursuant to said Stipulation.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above entitled cause be and is hereby dismissed with

prejudice to the filing of a future action against Wheelchair House, Ltd., the parties to bear their own respective costs.

Dated this 24 day of February, 1993.

S/ THOMAS R. BRETT

JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

C. Clay Roberts
Richard Marrs
Attorneys for Plaintiff

William D. Perrine
Attorney for Defendant
Wheelchair House, Ltd.

ENTERED ON DOCKET

DATE 2-25-93

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**CIVIL ACTION NO. 92-C-754-B**
	)	
ONE PARCEL OF REAL PROPERTY KNOWN AS: 6333 SOUTH RICHMOND, TULSA, OKLAHOMA, AND ALL BUILDINGS, APPURTENANCES, AND IMPROVEMENTS THEREON,	)	
	)	
Defendant.	)	

FILED

FEB 24 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT OF FORFEITURE

IT NOW APPEARS that the forfeiture proceeding herein has been fully compromised and settled. Such settlement more fully appears by the written Stipulation for Forfeiture entered into by and between plaintiff, United States of America, and Claimant Ruth Anne Blair, Individually and as Trustee of the Revocable Inter Vivos Trust of Ruth Watson Dittman, and filed herein, which Stipulation for Forfeiture is incorporated by reference.

It further appearing that there are no potential claimants to the sum of Thirty-eight Thousand Five Hundred Dollars ($38,500.00), representing a portion of the equity value in the defendant real property, and that no other person or entity has any right, title, or interest in the Thirty-eight Thousand Five Hundred Dollars ($38,500.00).

NOW, THEREFORE, on motion of Catherine J. Depew, Assistant United States Attorney for the Northern District of Oklahoma, and with the consent of Ruth Anne Blair, Individually and as Trustee of the Revocable Inter Vivos Trust of Ruth Watson Dittman, pursuant to the Stipulation for Forfeiture on file herein, the Court finds as follows:

That the verified Complaint for Forfeiture In Rem was filed in this action on the 31st day of August 1992; the Complaint alleges that the defendant real property, with buildings, appurtenances, and improvements is subject to forfeiture pursuant to 18 U.S.C. §§ 981 and 1955.

That a Warrant of Arrest and Notice In Rem was issued by the clerk of this court on the 4th day of September 1992.

That the United States Marshals Service personally served a copy of the Complaint for Forfeiture In Rem and the Warrant of Arrest and Notice In Rem on the defendant real property known as 6333 South Richmond, Tulsa, Oklahoma, on the 18th day of September 1992.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the sum of Thirty-eight Thousand Five Hundred Dollars ($38,500.00), payable by Ruth Anne Blair by Cashier's Check to the United States Marshals Service, which sum represents a portion of the equity value of Claimant Ruth Anne Blair, Individually and as Trustee of the Revocable Inter Vivos Trust of

Ruth Watson Dittman, in and to the real property known as 6333 South Richmond, Tulsa, Oklahoma, is condemned as forfeited to the United States of America, for disposition according to law.

IT IS FURTHER ORDERED by the Court that upon receipt of the Cashier's Check in the amount of Thirty-eight Thousand Five Hundred Dollars ($38,500.00), payable to the United States Marshals Service, and pursuant to this Judgment of Forfeiture, the plaintiff, the United States of America shall file of record in the Office of the County Clerk of Tulsa County, Oklahoma, its Release of Lis Pendens, thereby releasing the Notice of Lis Pendens filed in that office on September 29, 1992, in Book 5439 at Page 2173, as Instrument No. 92-086293.

ENTERED this _____ day of _____ 1993.

THOMAS R. BRETT, Judge of the
United States District Court for the
Northern District of Oklahoma

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney

CATHERINE J. DEPEW
Assistant United States Attorney

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SHERRIE R. KAPLAN,

Plaintiff,

vs.

GEORGE RENBERG, DONALD RENBERG, ROBERT RENBERG, DEAN WITTER REYNOLDS, INC.,

Defendants.

No. 92-C-210-E

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

ORDERED this 25th day of February, 1993.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THRIFTY RENT-A-CAR SYSTEM, INC., an Oklahoma Corporation)
)
Plaintiff,)
)
v.) No. 91-C-482-B
)
LOS ANGELES RENTAL AND LEASING, INC., ABCO AUTO FLEET, INC., TED L. ANDERSON, P. THOMAS ANDERSON, MARVIN J. ANDERSON,)
)
Defendants.)

JUDGMENT

The Court has before it for consideration the Motion of the Plaintiff, Thrifty Rent-A-Car System, Inc., for the entry of a Judgment pursuant to the terms of a Settlement Agreement entered into between Plaintiff and Defendants as of the 17th day of April, 1992 (the "Settlement Agreement").

The Court has considered all matters relevant to a determination of Plaintiff's Motion. In particular, the Court has reviewed the Settlement Agreement and has considered the facts presented by Plaintiff in support of its right to the entry of this Judgment. The Court finds that, pursuant to the terms of the Settlement Agreement, and under the facts, Plaintiff is entitled to the Judgment reflected herein.

Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Judgment be, and hereby is, entered in favor of the Plaintiff, Thrifty Rent-A-Car System, Inc., and against the Defendants, Los Angeles Rental and Leasing, Inc., ABCO Auto Fleet, Inc., Ted L.

Anderson and P. Thomas Anderson, jointly and severally, in the amount of Three Million Dollars ($3,000,000).

IT IS FURTHER ORDERED that Judgment be, and hereby is entered in favor of the Plaintiff, Thrifty Rent-A-Car System, Inc., and against the Defendants, Los Angeles Rental and Leasing, Inc., ABCO Auto Fleet, Inc., Ted L. Anderson and P. Thomas Anderson, jointly and severally, for a reasonable attorney's fee incurred in connection with the enforcement of the settlement agreement if timely applied for pursuant to Local Rule 6. Costs are likewise assessed against the Defendants if timely applied for pursuant to Local Rule 6.

This Judgment shall bear interest at the rate of 3.45% per annum until paid. The Judgment is not entered against Marvin J. Anderson and he is not liable individually or jointly under its terms.

IT IS SO ORDERED this 24th day of February, 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PHILLIP LEE HULL, a minor, by his natural parents, guardians and personal representatives, PHILLIP GENE HULL AND TANYA LEE HULL, husband and wife, and PHILLIP GENE HULL, Individually, and TANYA LEE HULL, Individually,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 88-C-1645-E

THIRD AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Third Amended Findings of Fact and Conclusions of Law is entered this 19 day of February, 1993, amends and supersedes the Second Amended Findings of Fact and Conclusions of Law entered herein on the 28th day of October, 1992 in response to the August 10, 1992 mandate of the United States Court of Appeals for the Tenth Circuit. Following the Tenth Circuit remand, the parties have fully briefed and discussed the remaining issues with the Court. The case is now in a posture for resolution of those issues.

In its August 10th Order the Circuit addressed four issues:

1. The power of this Court to establish a full reversionary Trust;
2. The date upon which interest on the award should begin to accrue;

3. Whether the guardian ad litem's fees are "attorneys fees" (deductible from the award) or costs (taxable to the government);

4. The appropriateness of certain specific damage awards; to-wit:

   a. economic losses (lost wages, earning capacity; medical treatment; special housing and transportation);

   b. non-economic losses (loss of enjoyment of life; mental and physical pain; disfigurement; permanent disability);

   c. parents' loss of services; aid, comfort, society and companionship.

The Court will address each issue ad seriatim and, to the extent that its provisions do not conflict with those of this Order, the Court's April 12, 1991 Order (Amended Findings of Fact and Conclusions of Law) is incorporated herein and made a part hereof.

1. Form of the Trust

The Court declines to adopt the government's proposal for a U.S.A./Grantor Trust pursuant to the terms of a structured settlement. Absent the availability of hard figures (see, Order of September 9, 1992, at docket #181) the Court is somewhat reticent about concluding that the government's proposal would work to Lee Hull's net benefit.[1] The Court is also concerned, in these

[1]See, e.g., The government's submission of Information Regarding Advantages of a Structured Settlement, docket #187, especially, M. Feldheim's article at p. 296:

uncertain times, about the long-term reliability of a casualty carrier.[2] The Court will, therefore, affirm its April 12, 1991 Order establishing an irrevocable Trust for Lee Hull under the provisions set forth therein; provided, however, that the Trust shall be fully reversionary upon the death of Lee Hull. The Trust, then, will be fully reversionary pursuant to 28 U.S.C. §1346 because this Court specifically finds that arrangement will be in Lee Hull's best interest.

The Circuit also asks the Court upon remand to consider 1)whether minor changes in the Trust might dissipate any tension between Lee Hull's interests and those of his parents; 2) whether there should be a provision of reimbursement to the Indian Health Service for services rendered to Lee in the future; and 3) whether a new guardian ad litem should be appointed. The Court has considered these issues and now finds that:

> Knowledge of cost is essential not just for fee calculation purposes but to ensure that the settlement is reasonable under the circumstances so as to avoid any possible claim of legal malpractice. This is particularly true where claims on behalf of minors and decedents' estates require court approval. The present value or cost is a critical fact that any court approving a compromise should know.

[2]See, e.g. The Government's Submission, docket 187, especially the article entitled "Structured Settlements: An Ounce of Prevention: Some Dos and Don'ts" from Trial, December 1988:

> The number-one "don't" is don't rely on the annuity company in a settlement like this. No matter how large and solid the company, if Fly-By-Night Leasing owns the annuity, your client is at the mercy of Fly-By-Night. If you cannot rely on the defendant or its casualty carrier, not just now but into the distant future, never settle a case like this on a structured basis.

1. Parents aver no tension exists between the respective interests; therefore no accommodation needs to be made;

2. In light of the history of this case, the Court does not feel that Plaintiffs should be required to use the Indian Health Services;

3. Pursuant to the terms of the Trust no guardian ad litem is required.

2. Accrual of Interest

The Circuit found that this Court's Nunc Pro Tunc Order of June 5, 1991 was the first document to satisfy the final judgment requirements of Rule 58 Fed.R.Civ.P. Post judgment interest, then, accrues from that date at the rate of 6.09% per annum to the date of deposit by the government to Fourth National Bank of Tulsa as Trustee.

3. Guardian Ad Litem Fees

The Court has reviewed the records and has determined that the services of the Guardian ad litem in this litigation primarily involved looking after the interests of Lee Hull (indeed, that was the purpose of the appointment from its inception); therefore her services as an officer of this Court should be taxed as costs against the government pursuant to Rule 54(d) Fed.R.Civ.P.

4. Specific Items of Damages

A. Life Expectancy:

The Court agrees that a scrivner's error appears at Finding No. 11, pp. 3-4 of the Court's April 12, 1991 Order and hereby specifically finds that Lee Hull's life

expectancy is 72.8 years. The parties have filed an Agreed Statement of Damage Awards which is attached hereto and made a part hereof.

B. Discount Rate

No discount rate should be applied to medical services and equipment or to lost wages damages. (See attached affidavit of Dr. Roger Bey regarding the investment provisions of the Guardian ad litem's Proposed Trust Document at docket #186). Further, while any differential between the investment rate and the inflation rate could support a finding favoring application of a discount rate, it is this Court's view that when the impact of future taxes if factored in, no differential is likely to exist; wherefore parity can be assumed. (See Dr. Roger Bey's affidavit, supra; see also Barnes v. United States, 685 F.2d 66, 78 (3rd Cir. 1982). The court need not modify its computation in this regard.

C. Findings Regarding Remaining Damage Claims denied by this Court:

1) specialized adaptive housing;
2) personal services rendered by Mrs. Hull;
3) housekeeping services required by Lee;
4) lost household services;
5) physical disability and disfigurement;
6) past medical expenses; and
7) dental expenses.

1) no additional award is required for specialized adaptive housing because it was provided for in the awards for medical and life care expenses. Miller v. United States, 901 F.2d 894, 896-97 (10th Cir. 1990);

2) Similarly, it would be duplicative to make an additional award to Mrs. Hull whose services are reflected in awards for Lee's care and for Mrs. Hull's pain and suffering;

3) Housekeeping services are likewise covered by awards to provide for Lee's care;

4) The Court finds that household services performed by a child are too speculative to reduce to calculation; therefore the Court declines to make an award for lost household services;

5) Damages for physical disabilities and disfigurement was subsumed within the award for pain and suffering;

6) Plaintiffs have previously been reimbursed for past medical expenses insofar as they made proper application for the same to the Indian Health Service. The record indicates there is no evidence upon which to supplement the previous reimbursements.

7) Provision has been made for future dental expenses in the Court's award for future medical expenses.

The Court adopts the Agreed Statement of Damage Awards submitted on the 30th day of November, 1992 (docket #200). A copy is attached hereto for reference and made a part hereof.

So ORDERED this 19TH day of February, 1993.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

PHILLIP LEE HULL, a minor, by his natural parents, guardians and personal representatives, PHILLIP GENE HULL and TANYA LEE HULL, husband and wife, and PHILLIP GENE HULL, individually, and TANYA LEE HULL, individually,	)	FILED NOV 03 1992 Richard M. Lawrence, Clerk U.S. DISTRICT COURT
Plaintiffs,	)	
vs.	)	No. 88-C-1645-E
UNITED STATES OF AMERICA,	)	
Defendant.	)	

AGREED STATEMENT OF DAMAGE AWARDS

Pursuant to the Court's Second Amended Findings of Fact and Conclusions of Law, entered October 29, 1992, directing the parties to submit an agreed statement of corrected calculations of specific damage awards, the parties submit the following agreed upon damage awards. The Court's judgment entered on June 5, 1991 (the date of judgment as determined by the Tenth Circuit) is as follows:

A. Physical Therapy:

(a) Until age 21 - 1 hour, 3 x per week at $75.00 per hour; $225 per week x 52 = $11,700 per year x 18 years = $210,600 - 16 weeks ($3,600) =

$207,000.00

(b) Age 21 to 45 - 1 hour, 1 x week at $75.00 per hour; $75 x 52 = $3,900 per year x 24 years =

$ 93,600.00

(c) Age 45 to 72.8 - 1 hour, 2 x per week at $75.00 per hour; $150 x 52 = $7,800 per year x 27.8 years =

$216,840.00

PHYSICAL THERAPY TOTAL = $517,440.00

B. Occupational Therapy:

(a) Until Age 21 - (see Physical Therapy (a) above) = $207,000.00

(b) Age 21 to 45 - (See Physical Therapy (b) above) = $ 93.600.00

(c) Age 45 to 72.8 - (see Physical Therapy (c) above = $216,840.00

OCCUPATIONAL THERAPY TOTAL = $517,440.00

C. Speech Therapy:

(a) Until Age 21 - (see Physical Therapy (a) above) = $207,000.00

(b) Age 21 to 45 - (See Physical Therapy (b) above) = $ 93,600.00

(c) Age 45 to 72.8 - (see Physical Therapy (c) above = $216,840.00

SPEECH THERAPY TOTAL = $517,440.00

D. Nursing: 6 hours per month at $50.00 per hour = $300 per month = $3,600 per year; To age 4 = $2,400 [8 months]; From 72 to 72.8 [$3,600 x .8] = $2,880; from 4 to 72 = 68 x $3,600 = $244,800 + $2,400 + $2,880 = $250,080.00

E. Nutritionist:

(a) Until age 21 - 52 hours per year at $40.00 per hour = $2,080 per year; To age 4 = 36 weeks x 40 = $1,440; 17 years at $2,080 = $35,360 + $1,440 = $36,800.00.

(b) Age 21 to 72.8 - 12 hours per year at $40.00 per hour = $480 per year; From 21 to 72 = 51 x $480 = $24,480; From 72 to 72.8 = $384 + $24,480 = $24,864.00.

NUTRITIONIST TOTAL = $ 61,664.00

F. Case Management: $208,596.02 to last over the course of Lee's lifetime. $200,000/69.8 years = $2,865.33 per year x 72.8 years = $208,596.02

G. Physicians and Hospitals:

(a) Pediatrician - 8 visits per year at $80.00 per visit = $640 per year; to age 4 = 8/12 months = .67 x $640 = $428.80; To age 72 = 68 x $640 = $43,520; To age 72.8 = .8 x $640 = $512 + $43,520 + $428.80 = $ 44,460.80

(b) Orthopedic Consultation - 3.5 visits per year at $87.50 per visit = $306.25 per year; To age 4 = .67 x $306.25 = $205.19; To age 72 = 68 x $306.25 = $20,825; To age 72.8 = .8 x $306.25 = $245 + $20,825 + $205.19 = $ 21,275.19

(c) Inpatient Hospitalization - $521,489.97 to last over the course of Lee's lifetime. $500,000/69.8 years = $7,163.32 per year x 72.8 years = $521,489.97

(d) Ophthalmological - $200.00 per year; To age 4 = $200 x .67 = $134; To age 72 = 68 x $200 = $13,600; To age 72.8 = .8 x $200 = $160; $134 + $13,600 + $160 = $ 13,894.00

(e) Medication - $30.00 per month for the rest of his life = $360 per year; to age 4 = $30 x 8 = $240; To age 72 = 68 x $360 = $24,480; To age 72.8 = .8 x $360 = $288; $240 + $24,480 + $288 = $ 25,008.00

(f) Inpatient Physician Expenses based on a calculation of $187.50 per year; To age 4 = .67 x $187.50 = $125.63; To age 72 = 68 x $187.50 = $12,750.00; To age 72.8 = .8 x $187.50 = $150; $125.63 + $12,750 + $150 = $13,025.63

H. Therapy Aide: $2,212,984.42 to last over the course of Lee's lifetime. $2,121,790/69.8 = $30,398.14; $36,500 x 69.8 = $2,547,700; $2,547,700 - $2,121,790 = 425,910 / 69.8 = 6,101.86; $36,500 - $6,101.86= $30,398.14. 72.8 x $30,398.14 = $2,212,984.30. $2,212,984.30

I. Fund Management: $818,444.61 to last over the course of Lee's lifetime. $784,717.50/69.8 years = $11,242.37 per year x 72.8 years = $818,444.60

J. Therapeutic Equipment, Computers, and Switches: $690,382.84 to last over the course of Lee's lifetime. $661,933/ 69.8 years = $9,483.28 per year x 72.8 years $690,382.79

K. Adaptive Wheelchair: $ 22,167.00

L. Customized Vehicle and Periodic Equipment: $82,948.19 for van; $50,319.61 for van maintenance = $133,267.80

M. Lost Wages and Impairment of Earnings Capacity: $1,601,474.00

N. Plaintiffs have established through competent evidence that because of Defendant's negligence they have suffered and are entitled to money damages for pain and suffering in the following amounts:

Lee Hull	$250,000.00
Tanya Hull	$150,000.00
Phillip Hull	$100,000.00

Paragraphs A through N above establish that Plaintiff Phillip Lee Hull's damages amount to $8,440,534.10, with Tanya Hull's damages of $150,000.00 and Phillip Hull's damages of $100,000.00, for a total principal judgment of $8,690,534.10, exclusive of interest accruing thereon at the rate of 6.09 percent per annum from June 5, 1991; and costs.

AGREED AS TO FORM AND CONTENT:

ATTORNEY FOR PLAINTIFFS

Stephen C. Wolfe, OBA #9830
1325 South Main
Tulsa, Oklahoma 74119
(918) 583-8574

ATTORNEY FOR DEFENDANT

Peter Bernhardt, OBA #741
Assistant U.S. Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PHILLIP LEE HULL, a minor, by his natural parents, guardians and personal representatives, PHILLIP GENE HULL AND TANYA LEE HULL, husband and wife, and PHILLIP GENE HULL, Individually, and TANYA LEE HULL, Individually,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 88-C-1645-E

O R D E R

The Third Amended Findings of Fact and Conclusions of Law filed on the 16th day of February, 1993 is vacated.

So ORDERED this 19th day of February, 1993.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PHILLIP LEE HULL, a minor, by his natural parents, guardians and personal representatives, PHILLIP GENE HULL AND TANYA LEE HULL, husband and wife, and PHILLIP GENE HULL, Individually, and TANYA LEE HULL, Individually,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 88-C-1645-E

ORDER AND FINAL JUDGMENT

Now on this 18th day of February, 1993 the Court enters this Order and Final Judgment together with its Third Amended Findings of Fact and Conclusions of Law and a form of The Phillip Lee Hull Trust filed of record on even date herewith.

The Court first addresses several motions which pend herein: Plaintiffs' Motion for New Trial (docket #192) is denied. Defendant's Motion to Amend (docket #193) is granted in part; denied in part. Guardian ad litem's Application for further instruction is moot. Plaintiffs' Motion for Order (docket #201) is granted. Parties' Joint Motion for Rule 54(b) Judgment (docket #205) is granted. Defendants' Supplemental Motion (docket #206) is granted in part; denied in part. Guardian ad litem's Application (docket #210) is granted in part; denied in part. Plaintiffs' Motion to Strike (docket #212) is denied. The Guardian ad litem's

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Application for attorney fees and expenses (docket #101) as supplemented (docket #148) is granted in part and denied in part, to-wit: having reviewed the services claimed and finding the hours submitted reasonable and the rate requested appropriate, the Court finds that for her services the Guardian ad litem should be awarded a fee of $92,985.00 for her excellent work in this case. However, the Court declines to award an enhancement. In reviewing the fees allowed the Guardian ad litem, Judith Finn and the Trust and Tax Expert, Jeff Stoermer, the Court has applied the standard set forth in this circuit which is articulated in Ramos v. Lamm. The Court first addressed the issue of appropriate hourly rate and applied the multiplier of hours reasonably spent. The Guardian ad litem drew upon a rare expertise in the area of developmental disabilities in performing her services to Phillip Lee Hull. Her knowledge was indispensable to an appropriate evaluation of his interests and needs. The services of the Trust and Tax Expert were essential to the development of an appropriate Trust document. The rate and hours spent by the expert were both reasonable and necessary to the task assigned. The Court now turns to the Guardian ad litem's application for an expense award. The Court has reviewed the services and expenses claimed and finds that the following represent proper expenses: $2,251.89 for general expenses; $10,723.00 for the Trust and Tax Expert, Jeff Stoermer; $115.00 for expert physical examination by Dr. T. Carey; $4,237.50 for PTT evaluation fee; and the statutory fee for expert witnesses, as mandated by the Tenth Circuit, for Helen English. As stated in

the Court's Third Amended Findings of Fact and Conclusions of Law, paragraph #3, the Court finds that because the services and expenses of the Guardian ad litem primarily involved looking after the interests of Lee Hull, her fees and expenses should be taxed as costs against the government pursuant to Rule 54(d) Fed.R.Civ.P.

Pursuant to the mandate of the Tenth Circuit, this Court's Order of February 27, 1992 is amended to vacate the award of $63,060.11 in expert witness fees because that amount impermissably exceeds the sum allowed by §1821. The expert witness fees award is the statutory sum of $2,344.31. The Court now directs entry of a final judgment as follows:

1. Judgment in favor of Plaintiff, Phillip Lee Hull, individually, against the Defendant, United States of America, in the principal sum of $8,440,534.10 plus post-judgment interest thereon at the rate of 6.09% per annum, from June 5, 1991 to the date of deposit by the Defendant, United States of America, to Bank IV (formerly Fourth National Bank of Tulsa) as Trustee.

2. Judgment in favor of Plaintiff, Phillip Gene Hull, individually, against the Defendant, United States of America, in the principal sum of $100,000.00, plus post-judgment interest thereon at the rate of 6.09% per annum, from June 5, 1991 to the date of payment.

3. Judgment in favor of Plaintiff, Tanya Lee Hull, individually, against the Defendant, United States of America, in the principal sum of $150,000.00, plus post-

judgment interest thereon at the rate of 6.09% per annum, from June 5, 1991 to the date of payment.

4. The Court finds that all appeals have been exhausted and that the individual claims of Plaintiffs, Phillip Lee Hull, Phillip Gene Hull and Tanya Lee Hull, are final.

5. The Court further orders that certification shall be made by Defendant's counsel, United States Department of Justice, to the General Accounting Office requesting payment in full of the aforementioned judgments in favor of Bank IV, as Trustee of Phillip Lee Hull, Phillip Gene Hull, individually, and Tanya Lee Hull, individually.

So ORDERED this 18th day of February, 1993.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA

DANNY L. MITTS,

Plaintiff,

vs.

WAL-MART STORE'S INC., a foreign corporation and PRESCOLITE INC., a foreign corporation,

Defendant,

MID-CONTINENT CASUALTY COMPANY

Movant.

Case No. 91-C-469-E

EOD 2/24/93

ORDER

COMES NOW the Court on this 25th day of February, 1993, upon MID-CONTINENT CASUALTY COMPANY's Motion To Dismiss Without Prejudice. The Court, having reviewed the Motion, finds that it should be sustained and MID-CONTINENT CASUALTY COMPANY granted permission to dismiss its action without prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that MID-CONTINENT CASUALTY COMPANY's Motion To Dismiss Without Prejudice is hereby sustained.

UNITED STATES ~~DISTRICT~~ JUDGE

RDG:LDC:dlq

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THOMAS C. GRINTER, et al.,

Plaintiffs,

vs.

ANCHOR STONE, et al.,

Defendants.

Case No. 86-C-979-E

ORDER GRANTING APPLICATION FOR AUTHORITY TO MAKE DISTRIBUTION AND FINAL PAYMENT OF COSTS AND ATTORNEY FEES

1. Plaintiffs on December 8, 1992 filed their Application for Authority to Make Distribution and for Final Payment of Costs and Attorney Fees. Hearing on Plaintiffs' Application was held December 17, 1992. Subsequent to the hearing a Court approved notice to the class regarding these matters was mailed and published. No objections to Plaintiffs' Application for Distribution and Attorney's Fees was filed. The Court finds that the Application remains unopposed.

2. At the hearing on December 17, 1992, Plaintiffs reported to the Court that from the settlement funds there remained a principal amount of $201,900.00 available for distribution to class members. Together with interest, the amount available on December 17, 1992 for distribution totaled $236,867.91. In open Court on February 22, 1993, Plaintiffs'

counsel advised that due to interest earned between December 17, 1992 and February 22, 1993, the total amount available for distribution to the class is now $238,612.47.

3. Plaintiffs' counsel further advised that 138 valid claims to participate in this settlement fund distribution had been submitted. Dividing the fund in equal shares, each claimant will receive approximately $1,729.07.

4. The Court finds that counsel for Plaintiffs have incurred additional fees and expenses generated in the course of the case since the close of trial and in the course of distributing the fund. The Court tentatively approved that the $25,000.00 in settlement funds due from Joe Brown Co. be set aside to cover such fees and expenses and that the entire balance of the settlement fund as of December 17, 1992 be distributed in equal shares to all class members who submitted approved claims for payment from the settlement fund generated in this matter.

IT IS THEREFORE ORDERED that the sum of $238,612.47 be distributed in equal shares to members of the class who have submitted approved claims and that the sum of $25,000.00 be approved for payment of additional attorney's fees and costs in this action.

So Ordered this 22nd day of February, 1993.

JAMES O. ELLISON, Chief Judge
United States District Court

FR:MCCOCH-1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

NATIONAL ASSOCIATION OF REVIEW APPRAISERS & MORTGAGE UNDERWRITERS, INC. and NATIONAL ASSOCIATION OF REAL ESTATE APPRAISERS, INC.,

Plaintiffs,

v.

GENE LAND,

Defendant.

No. 92-C-1063-E

ORDER

Based on the Stipulation of Counsel, IT IS HEREBY ORDERED THAT the above-entitled action shall be dismissed with prejudice and without costs to any party.

DATED this 19th day of February, 1993.

UNITED STATES DISTRICT JUDGE

JSCH-107

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LARRY BANGS, individually,

Plaintiff,

vs.

JACK J. KING, individually; ROBIN A. KING, individually; and KING ASSOCIATES, INC., an Oklahoma corporation;

Defendants.

No. 91-C-362-E

O R D E R

The Court has before it for consideration the following post-trial motions: Defendants' Motion for New Trial (docket #66), Plaintiff's Motion for Attorney Fees (docket #58), and Defendants' Motion requesting this Court to determine the remaining issues with respect to the counterclaims filed in this matter (docket #70). After a hearing in open Court on these issues, and careful consideration of the entire file herein, the Court finds as follows.

With respect to Defendants' Motion for New Trial (docket #66), the Court finds that its conclusion that Plaintiff is entitled to interest pursuant to Okla. Stat. title 15, §263 (describing when the basic fact of a presumption has, or has not, been established) and Okla. Stat. title 12, §2303, (concerning presumptions with respect to the existence of an agreement to pay interest), was neither inconsistent with the Court's findings of fact nor with the pleadings, nor with the evidence. The fact that there was no

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written agreement as to interest does have probative value on the issue of the non-existence of an agreement as to interest and therefore, pursuant to 12 O.S. §2303, the statutory presumption would be in favor of the non-existence of an agreement as to interest. As stated in open Court, the evidence was not such as to overcome this presumption that no agreement as to interest had been made between the parties to this agreement.

With respect to Plaintiff's Motion for Attorney Fees, the Court finds that the Plaintiff was not acting in bad faith by filing this action in federal court. Therefore Plaintiff is entitled to recover costs, including a reasonable attorney's fee, pursuant to Okla. Stat. tit. 15, §276, with respect to Plaintiff's first cause of action, on which Plaintiff prevailed. In reviewing the fees allowed Plaintiff, the Court has applied the standard set forth in this circuit as articulated in Ramos v. Lamm, 713 F.2d 546 (10th Cir. 1983). The Court first addressed the issue of appropriate hourly rate and then applied the multiplier of hours reasonably spent. In so doing the Court finds that the 236.4 hours of work spent by Plaintiff were reasonable and necessary to the tasks assigned. Therefore, Plaintiff is entitled to recover their requested fee of $25,061.75.

Finally, with respect to the Defendant's request for this Court to determine the remaining issues with respect to Defendants' counterclaims, the Court finds that conducting an accounting at this point in time would be pre-mature in that a full and final accounting is not appropriate until such time as Plaintiff has had

the opportunity to recover his just share of the profits and expenses from the Tri-State venture.

IT IS THEREFORE ORDERED that Defendants' Motion for New Trial is hereby denied, AND Plaintiff's Motion for Recovery of Attorney Fees as Costs in the amount of $25,061.75 is hereby granted, AND Defendants' request for a final determination with respect to Defendants' counterclaim is hereby denied.

IT IS FURTHER ORDERED that this Court will continue to retain jurisdiction over this matter until such time as a full and final accounting can be rendered.

ORDERED this 23rd day of February, 1993.

JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MICHAEL L. WARD,

Plaintiff,

vs.

TOWN OF OOLOGAH, OKLAHOMA, an Oklahoma municipal corporation, and STEVE MCKENZIE, an individual, and SCOTT SATTERFIELD, an individual,

Defendants.

Case No. 92-C-353-E

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties stipulate that this case is dismissed with prejudice against the Defendant, Town of Oologah, Oklahoma.

JOE WHITE, OBA #10521
Attorney for Plaintiff
1718 West Broadway
Collinsville, OK 74021

JOHN H. LIEBER, OBA #5421
Attorney for Defendant
Town of Oologah, Oklahoma
EILER & DETRICH
2727 East 21st Street
Suite 200, Midway Building
Tulsa, Oklahoma 74114

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BENNY MAGNESS, d/b/a MAGNESS OIL COMPANY

Plaintiff,

v.

MANY MARTS, INC. d/b/a COWBOY CORNER,

Defendant.

Case No. 92-C-665-E

JOINT STIPULATION OF DISMISSAL WITHOUT PREJUDICE

Plaintiff, Benny Magness, and Defendant, Many Marts, Inc., hereby jointly stipulate, pursuant to Rule 41(a)(1) and (c) of the Federal Rules of Civil Procedure, to dismissal of the entitled action, including any and all claims asserted by Plaintiff in his Complaint and any and all claims asserted by Defendant in its Counterclaim, without prejudice, each party to bear its own costs.

DATED this 22 day of February, 1993.

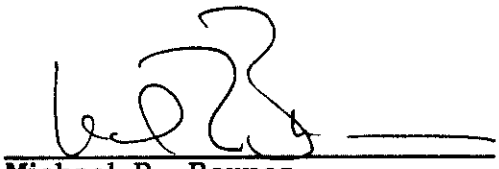
G. W. TURNER, III
SEAN H. McKEE

By: G. W. Turner, III, OBA# 11182

CONNER & WINTERS
A Professional Corporation
2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-5711

Attorneys for Plaintiff
BENNY MAGNESS d/b/a
MAGNESS OIL COMPANY

MICHAEL R. BARNES

By: 
Michael R. Barnes

513 Whitehead Street
Key West, Florida 33041-1777

Attorney for Defendant
MANY MARTS, INC. d/b/a
COWBOY CORNER

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

IN RE:	§	Case Nos. 92-1345 through 92-1350
EDISTO RESOURCES CORPORATION, a Delaware Corporation, et al.	§	(Chapter 11)
DEBTORS.	§	In the United States Bankruptcy Court for the District of Delaware
PEXCO U.S.A. LTD., a Delaware corporation; NORMAN J. SINGER, an individual; RHODA A. SINGER, an individual; and TAIR FINANCIAL LTD., a Barbados corporation,	§	ADVERSARY NO. 92-0390-W
PLAINTIFFS,	§	CIVIL ACTION NO. 92 C-1029E
V.	§	
EDISTO RESOURCES CORPORATION, a Delaware corporation, JAMES R. MCNAB, JR., an individual; and DAVID N. BROUSSARD, an individual,	§	
DEFENDANTS.	§	

ORDER TRANSFERRING MOTION TO WITHDRAW AND OBJECTION THERETO TO THE DISTRICT OF DELAWARE

On motion of Edisto Resources Corporation ("Edisto") for entry of an order transferring the Motion to Withdraw Reference and Edisto's objection thereto to the United States District Court for the District of Delaware, this Court finds that the action the plaintiffs seek to withdraw has been transferred to the Delaware bankruptcy court and, consequently, the

Motion to Withdraw Reference and the objection thereto are no longer properly before this Court. Accordingly, it is hereby ORDERED that the Motion to Withdraw Reference and the objection thereto shall be transferred to the United States District Court for the District of Delaware pursuant to 28 U.S.C. § 1412.

DATED this 23rd day of February, 1993.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 2-23-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEAN HENDRYX, ...Plaintiff,

v.

HARRIET MUZLJAKOVICH and CHARLES HARDT, ...Defendants.

No. 92-C-1199B

NOTICE OF DISMISSAL

TO: HARRIET MUZLJAKOVICH, Defendant,
and her counsel,
Susan Brimer Loving, Esq.
Attorney General of Oklahoma
Rabindranath Ramana, Esq.
Assistant Attorney General
4545 North Lincoln, Suite 260
Oklahoma City, Oklahoma 73105-3498

CHARLES HARDT, Defendant,
and his counsel,
David L. Pauling, Esq., City Attorney
Martha Rupp Carter, Esq.
200 Civic Center, Room 316
Tulsa, Oklahoma 74103

PLEASE TAKE NOTICE that Plaintiff hereby dismisses, without prejudice, pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure, the Complaint in the above-entitled action as to the Defendant HARRIET MUZLJAKOVICH only.

DATED this 22nd day of February, 1993.

DEAN HENDRYX

ROBERT M. BUTLER, OBA#1380
Counsel for Plaintiff

1710 South Boston Avenue
Tulsa, Oklahoma 74119
(918) 585-2797

CERTIFICATE OF MAILING

I hereby certify that on this 22nd day of February, 1993, a true and correct copy of the above and foregoing Notice of Dismissal was mailed, with proper postage thereon, to:

SUSAN BRIMER LOVING, ESQ.
ATTORNEY GENERAL OF OKLAHOMA
RABINDRANATH RAMANA, ESQ.
ASSISTANT ATTORNEY GENERAL
4545 North Lincoln, Suite 260
Oklahoma City, Oklahoma 73105-3498

DAVID L. PAULING, ESQ., CITY ATTORNEY
MARTHA RUPP CARTER, ESQ.
200 Civic Center, Room 316
Tulsa, Oklahoma 74103

ROBERT M. BUTLER

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HOUSSAM EDMOND NADER,

Plaintiff

vs.

JOHN ZINK COMPANY, JOE TOWNS, and JACK CARTER,

Defendants.

Case No. 92-C-508-E

STIPULATION OF DISMISSAL

COME NOW the parties and stipulate, pursuant to Federal Rule of Civil Procedure 41(a), that this case may be dismissed with prejudice, each party to bear his or its own costs.

Houssam Nader

Houssam Nader
Pro Se Plaintiff

for

Rick E. Bailey
KOCH INDUSTRIES, INC.
4111 East 37th Street North
P.O. Box 2256
Wichita, Kansas 67201
Telephone: (316) 832-8024
Fax: (316) 832-8950

-and-

Larry D. Leonard, OBA #5380
ZARBANO, LEONARD & SCOTT
5051 South Lewis, Suite 200
Tulsa, Oklahoma 74105-6061
Telephone: (918) 742-2382
Fax: (918) 742-5519

Attorneys for Defendants,
John Zink Company, Joe Towns,
and Jack Carter

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MICHAEL PRATER,

Petitioner,

vs.

WARDEN CODY,

Respondent.

No. 92-C-1115-B

ORDER

Petitioner's motions to dismiss his state convictions (#4 & #5) are hereby denied without prejudice.

SO ORDERED THIS 22nd day of Feb., 1993.

THOMAS R. BRETT
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SCOTT O'DELL HINDS, an individual,

Plaintiff,

vs.

PEACHTREE MEDICAL RENTALS, INC., a Georgia Corporation; PEACHTREE PATIENT CENTER, INC., a Georgia corporation; PEACHTREE TECHNOLOGIES, INC., a Georgia corporation; PEACHTREE PATIENT CENTER CORPORATION, a Georgia corporation, INVACARE CORPORATION, an Ohio corporation; WHEELCHAIR HOUSE, LTD., a Colorado corporation; BILL TUTTLE, an individual; CRAIG HOSPITAL, a Colorado corporation.

Defendants.

No. 91-C-915-C B

ORDER OF DISMISSAL

Upon application of the parties, Scott O'Dell Hinds, Plaintiff, and Defendant Invacare Corporation and pursuant to F.R.C.P. 41(a)(1)(ii) that the above-entitled cause of action be dismissed with prejudice as to Defendant Invacare Corporation, only, and upon the parties' representations that a settlement agreement has been reached between Plaintiff and Defendant Invacare Corporation. The Court finds that said cause of action should be dismissed with prejudice as to the Defendant Invacare Corporation.

IT IS SO ORDERED that the above-entitled cause is dismissed with prejudice as to the Defendant Invacare Corporation.

DATED: This 24th day of Feb, 1993.

S/ THOMAS R. BRETT

Judge

jfm\plds\invacare.dis

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TITLE TECHNOLOGIES, INC., a corporation,
Plaintiff,

vs.

A. PAUL SHAPANSKY, individually,
Defendant.

Case No. 93-C-0009B
State Court Case
No. CJ 92-5697

ORDER

NOW on this 17th day of January, 1993, comes on for hearing Defendant A. Paul Shapansky's Application for Order Withdrawing Notice of Removal and Request For Remand. The Court, having reviewed the pleadings filed herein, and being advised in the premises, finds that said Application should be granted and,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Shapansky be and is hereby allowed to withdraw his previously filed Notice of Removal and the above-referenced case is now remanded back to the Oklahoma State District Court from which it was previously removed.

IS IT SO ORDERED.

UNITED STATES DISTRICT JUDGE FOR
THE NORTHERN DISTRICT OF OKLAHOMA

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

JMR-3243

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JERRY ERNEST,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 92-C-893-C
	)	
ALEXANDER & ASSOCIATES, INC., ALEXANDER & ALEXANDER BENEFITS SERVICES INC., AND ALEXANDER & ALEXANDER SERVICE INC.,	)	
	)	
Defendants.	)	

O R D E R

Before the Court is the motion to dismiss and to strike of the defendants. Plaintiff's rather confusing state court petition, removed to federal court by the defendants, alleges that plaintiff was induced by defendants' oral promises to move to Oklahoma from Texas under the pretense of giving plaintiff a job for a reasonable period of time in excess of one year, until reasonable retirement age. He was subsequently discharged. Plaintiff apparently characterizes this cause of action as breach of contract.

As a second cause of action, plaintiff alleges that he was discharged because of his age. On its face, this would seem to be a claim under the Age Discrimination in Employment Act, (ADEA) 29 U.S.C. §§621-34. The petition does not mention the Act and at the status and scheduling conference held in this case, plaintiff waived any federal claim. Rather, as his response to the present motion makes clear, plaintiff proceeds under the public policy exception to discharge recognized in Burk v. K-Mart, 770 P.2d 24

(Okla. 1989).

As to the first cause of action, defendants argue that the alleged contract is within the statute of frauds, being unable to be performed within a year, and is therefore void. See 15 O.S. §136. This Court need not resolve the conflict between Roxana Petroleum Co. v. Rice, 235 P. 502 (Okla. 1924) and Dicks v. Clarence L. Boyd Co., 238 P.2d 315 (Okla. 1951) recognized in Krause v. Dresser Industries, Inc., 910 F.2d 674, 679 (10th Cir. 1990). The Roxana court held that a contract for "permanent" employment was not within the statute of frauds, but that such a contract was "terminable at will." 235 P. at 506. Therefore, whether the contract is within the statute or not, plaintiff's sole recourse is the Burk tort claim.

As to the second cause of action, defendants assert that plaintiff has not complied with the procedural prerequisites for bringing a claim under the ADEA. Plaintiff points to Tate v. Browning-Ferris, Inc., 833 P.2d 1218 (Okla. 1992), which held that the existence of a statutory remedy does not preclude the bringing of a Burk action. Since the court-created cause of action is not pre-empted by the statute, this Court is unpersuaded that the prerequisites to bringing the statutory action in any way limit the common-law action. Second, defendants contend that Tate is distinguishable in that it was an action involving racial discrimination. The Court sees no basis for such a distinction. Likewise, Burk provides for punitive damages and defendants' motion to strike plaintiff's request is denied. In sum, plaintiff may

proceed with his wrongful discharge action.

Finally, defendants assert that Alexander & Alexander Service Inc. is a holding company with no employment relationship to plaintiff. Plaintiff has not responded to this aspect of the motion and it is deemed confessed.

It is the Order of the Court that the motion of the defendants to dismiss and to strike is hereby granted as to plaintiff's breach of contract action and is denied as to plaintiff's wrongful discharge state tort action.

It is the further Order of the Court that Alexander & Alexander Service Inc. is hereby dismissed with prejudice as a party defendant.

IT IS SO ORDERED this 18th day of February, 1993.

H. DALE COOK
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THRIFTY RENT-A-CAR SYSTEM, INC., an Oklahoma corporation,

Plaintiff,

vs.

GRAN SASSO ENTERPRISES, INC., a foreign corporation; and RONALD W. HOUCK, an individual,

Defendants.

Case No. 92-C-863-B

JUDGMENT

This matter comes before the Court upon Motion and Affidavit of the Plaintiff, Thrifty Rent-A-Car System, Inc. ("Thrifty"), duly made for entry of Judgment by default. Having considered the evidence and the arguments of counsel, the Court makes the following findings:

1. On September 24, 1992, Thrifty filed a Complaint against Defendants Gran Sasso Enterprises, Inc. ("Gran Sasso") and Ronald W. Houck ("Houck").

2. The Summons and Complaint were served upon Gran Sasso and Houck on October 21, 1992. The returns of service were filed on October 30, 1992.

3. Defendant Gran Sasso has neither formally entered an appearance in this matter nor filed an answer to Plaintiff's Complaint. Defendant, Gran Sasso, is thus in default, and Plaintiff is entitled to a Default Judgment pursuant to Rule 55(b) of the Federal Rules of Civil Procedure.

4. The Defendant is indebted to Plaintiff in the sum of $66,823.73 for failure to pay certain obligations pursuant to written contracts.

5. The Master Lease Agreement which comprises the majority of Thrifty's claims against this Defendant provides that Thrifty shall recover its attorney's fees incurred herein.

6. The Plaintiff has incurred $189.54 in costs and $2,101.00 in attorney fees, all of which the Court finds were reasonably and necessarily incurred in the prosecution of this case, and for all of which Plaintiff is entitled to judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Judgment is entered in favor of Plaintiff, Thrifty Rent-A-Car System, Inc., and against the Defendant, Gran Sasso Enterprises, Inc., in the amount of $70,180.02, together with the costs of this action in the amount of $189.54, and a reasonable attorney's fee in the amount of $2,101.00, making a total Judgment of $72,470.56, for all of which execution shall issue. Interest shall accrue on this Judgment at the rate of 3.45 % per year.

Judgment rendered this 17 day of ~~January~~ February, 1993.

S/ THOMAS R. BRETT

United States District Judge

md1192.071

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

EMPLOYEE BENEFIT PLANS OF OKLAHOMA, INC.,

Plaintiff,

vs.

UNITED OLYMPIC LIFE INSURANCE COMPANY,

Defendant.

Case No. 91-C-151E

STIPULATION OF DISMISSAL AND
DISMISSAL WITH PREJUDICE

The Plaintiff and the Defendant, United Olympic Life Insurance Company ("UOL") pursuant to Fed.R.Civ.P. 41(a)(1), hereby stipulate to the dismissal of the present case against UOL, with prejudice.

Respectfully submitted,

FELDMAN, HALL, FRAN, WOODARD & FARRIS

By: Jody R Nathan
John Woodard, OBA #
Jody Nathan, OBA # 11685
525 S. Main, Suite 1400
Tulsa, Oklahoma 74103-4409

ATTORNEYS FOR THE PLAINTIFF

TILLY & WARD,
a professional corporation

5509002.022-54

By: Brent L. Mills

James W. Tilly, OBA #9019
Brent L. Mills, OBA #13464
Two West Second Street
Suite 2220
Tulsa, OK 74101

ATTORNEYS FOR THE DEFENDANT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

POLLIE LAZENBY a/k/a POLLY LAZENBY a/k/a POLLIE A. LAZENBY a/k/a POLLIE ANN LAZENBY; MARSHALL DARNELL WILSON; STATE OF OKLAHOMA ex rel. OKLAHOMA TAX COMMISSION; COUNTY TREASURER, Tulsa County, Oklahoma; BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma; JOSETT MARIE WILSON,

Defendants.

ENTERED ON DOCKET
DATE FEB 22 1993

FILED

FEB 19 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 91-C-0056-E

DEFICIENCY JUDGMENT

This matter comes on for consideration this 19th day of Feb, 1993, upon the Motion of the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, for leave to enter a Deficiency Judgment. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Pollie Lazenby a/k/a Polly Lazenby a/k/a Pollie A. Lazenby a/k/a Pollie Ann Lazenby, appears neither in person nor by counsel.

The Court being fully advised and having examined the court file finds that a copy of Plaintiff's Motion was mailed by certified return receipt addressee restricted mail to Pollie Lazenby a/k/a Polly Lazenby a/k/a Pollie A. Lazenby a/k/a Pollie Ann Lazenby, 901 North Elgin #418, Tulsa, Oklahoma 74106, and by certified return receipt addressee restricted mail to Pollie Lazenby a/k/a Polly Lazenby a/k/a Pollie A. Lazenby a/k/a Pollie Ann Lazenby, 1700 Riverside Drive, #101, Tulsa, Oklahoma

74119-4619, and by first-class mail to all answering parties and/or counsel of record.

The Court further finds that the amount of the Judgment rendered on March 2, 1992, in favor of the Plaintiff United States of America, and against the Defendant, Pollie Lazenby a/k/a Polly Lazenby a/k/a Pollie A. Lazenby a/k/a Pollie Ann Lazenby, with interest and costs to date of sale is $8,517.95.

The Court further finds that the appraised value of the real property at the time of sale was $3,500.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered March 2, 1992, for the sum of $3,334.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on the 12th day of February, 1993.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendant, Pollie Lazenby a/k/a Polly Lazenby a/k/a Pollie A. Lazenby a/k/a Pollie Ann Lazenby, as follows:

Principal Balance plus pre-judgment interest as of March 2, 1992	$7,727.45
Interest From Date of Judgment to Sale	126.22
Late Charges to Date of Judgment	110.00
Appraisal by Agency	50.00
Abstracting	115.00
Publication Fees of Notice of Sale	164.28
Court Appraisers' Fees	225.00
TOTAL	$8,517.95
Less Credit of Appraised Value -	3,500.00
DEFICIENCY	$5,017.95

plus interest on said deficiency judgment at the legal rate of _____ percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendant, Pollie Lazenby a/k/a Polly Lazenby a/k/a Pollie A. Lazenby a/k/a Pollie Ann Lazenby, a deficiency judgment in the amount of $5,017.95, plus interest at the legal rate of 3.45 percent per annum on said deficiency judgment from date of judgment until paid.

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney

PHIL PINNELL, OBA #7169
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

PP/css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES,

Plaintiff,

vs.

BRUCE ALAN BROWN,

Defendant.

CASE NO. 92-C-733-E

ORDER OF WITHDRAWAL

THIS CAUSE is before this Court upon the Stipulation for Dismissal of Appeal. Upon review of the Stipulation, the Court finds and after due consideration, it is

ORDERED, ADJUDGED, AND DECREED that the United States' appeal is withdrawn, each party to bear its own appellate costs, including attorney's fees.

IT IS SO ORDERED.

Dated this 18th day of Feb, 1992.

James O. Ellison

Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:	
HARGRAVE, CARTER R. HARGRAVE, BARBARA H. Debtors.	Case No. 91-04188-C (Chapter 13) Adversary No. 92-0022-C
CARTER R. HARGRAVE and BARBARA H. HARGRAVE, Appellees,	
v.	No. 92-C-248-E
BANCOKLAHOMA MORTGAGE COMPANY, Appellant.	

ORDER

NOW on this 19 day of February, 1993, this matter comes on before the Court. The Appellant, Bank of Oklahoma, N.A., appears by its attorney, THOMAS L. VOGT of the law firm Jones, Givens, Gotcher & Bogan. The Appellees Carter R. Hargrave and Barbara H. Hargrave appear by their attorney, Sheldon E. Morton. The Court finds that on June 4, 1992, the Appellees converted their bankruptcy case from a Chapter 13 proceeding to a Chapter 7 proceeding, and that Appellees have failed to file their response brief within the required time period. Furthermore, the Court has been informed by the Appellees that they do not oppose this Appeal and have consented to the entry of an order reversing the Order Determining Secured Claim on Homestead and Avoiding Lien entered on

March 10, 1992, in Case No. 91-04188-C (Adversary No. 92-0022-C) in the United States Bankruptcy Court for the Northern District of Oklahoma.

IT IS THEREFORE ORDERED that such Order Determining Secured Claim on Homestead and Avoiding Lien is reversed.

UNITED STATES DISTRICT COURT JUDGE

APPROVED:

JONES, GIVENS, GOTCHER & BOGAN

By _____
THOMAS L. VOGT, #10995
15 East 5th Street, #3800
Tulsa, OK 74103

ATTORNEYS FOR APPELLANT BANK OF OKLAHOMA, N.A.

_____
SHELDON E. MORTON
10338 East 21st Street
Tulsa, OK 74129

ATTORNEY FOR APPELLEES

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JACQUI STARR,

Plaintiff,

vs.

PEARLE VISION, INC., d/b/a PEARLE VISION EXPRESS, a corporation,

Defendant.

No. 92-C-463-B

EOD 2/22/93

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes before the Court on the Joint Stipulation of Dismissal With Prejudice of the parties. Plaintiff desires to dismiss Claim V of her Petition in which she asserted a claim for alleged retaliation by Defendant for filing a workers' compensation claim. Defendant has no objection to the dismissal with prejudice by Plaintiff of Claim V of her Petition.

IT IS THEREFORE ORDERED that Claim V of Plaintiff's Petition is dismissed with prejudice.

ENTERED this 17th day of February, 1993.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 2-22-93

FILED

FEB 19 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAMES K. SLUSSER, Plaintiff, vs. ADVO-SYSTEM, INC., GREGG DITTOE, PETER CORRAO, PAUL LEONE, and WAYNE KINCH, Defendants.	)	Case No. 92-C-24-B

STIPULATED ORDER OF
DISMISSAL WITH PREJUDICE

IT IS HEREBY STIPULATED, by and between counsel for all parties hereto subject to the approval of the Court, as follows:

1. All claims presented by the Amended Complaint shall be dismissed with prejudice as to all parties pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

2. Each party shall bear his or its own costs, expenses and attorneys fees.

3. The parties have agreed that the terms and conditions of the resolution of this dispute shall remain confidential. Any violation of the confidentiality agreement may be enforced by contempt proceedings brought on by motion in this Court.

DATED: February 18th, 1993

So Ordered:

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

SHIPLEY, INHOFE & STRECKER

By _____
David E. Strecker, Esq. (OBA #8687)
Leslie C. Rinn, Esq. (OBA #12160)
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ATTORNEYS FOR PLAINTIFF
JAMES K. SLUSSER

GABLE & GOTWALS, INC.

By _____
Ronald N. Ricketts, Esq. (OBA #7563)
Kari S. Moroney, Esq. (OBA #14284)
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15 West Sixth Street
Tulsa, Oklahoma 74119-5447

ATTORNEYS FOR DEFENDANTS
ADVO-SYSTEM, INC.,
GREGG DITTOE, PETER CORRAO,
PAUL LEONE AND WAYNE KINCH

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MIDAMERICA FEDERAL SAVINGS AND LOAN ASSOCIATION,

Plaintiff,

vs.

SHERIDAN PROPERTIES, INC., et al.,

Defendants.

Case No. 88-C-~~1244~~-B
1341

ORDER OF DISMISSAL

Upon Motion of Plaintiff, Local America Bank of Tulsa, F.S.B. ("Local America"), and Defendant Justin Lyon ("Lyon") to dismiss with prejudice certain claims pursuant to Rule 41 of the Federal Rules of Civil Procedure,

IT IS ORDERED that all claims asserted by Local America against Lyon, including its claim for a deficiency judgment, and all counterclaims asserted by Lyon against Local America and the Federal Deposit Insurance Corporation as Receiver for MidAmerica Federal Savings and Loan Association are hereby dismissed with prejudice, each party to bear his or its own costs and attorneys' fees.

DATED this 17th day of February, 1993.

S/ THOMAS R. BRETT

THOMAS H. BRETT
United States District Judge
for the Northern District
of Oklahoma